A SHORT

INTRODUCTION

John Richardson

Moral Philoſophy.

IN THREE PARTS.

CONTAINING THE

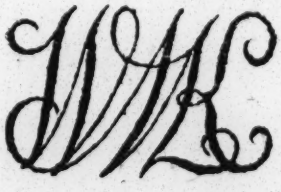
ELEMENTS OF *ETHICKS*,

AND THE

LAW OF *NATURE*.

By FRANCIS HUTCHESON, L. L. D.

TRANSLATED FROM THE LATIN.



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BY THE TRANSLATOR.

THE Author of this book had no inclination that it ſhould be tranſlated, as he wiſhes that all our ſtudents were much inured to the Latin tongue, which for the two laſt centuries, (and in many preceding, in ſuch a ſtile as they had) was the common channel of communication among the Learned through all Europe. He was abundantly aware that ſuch compends, wrote in the moſt ſuccinct manner their authors could, and yet touching at a great variety of ſubjects, with hints of the principal topicks of reaſoning, muſt appear very jejune and unpleaſant to common readers: not to mention the unavoidable terms of art, which can ſcarce be turned into eaſy common language. But he found that the preventing a tranſlation was impoſſible; as it was deſigned in Lon-

don ſoon after the publication of the firſt edition. He therefore thought proper it ſhould be rather done in Glaſgow. The Engliſh reader muſt excuſe the tranſlator in the uſe of ſome few Latin terms of art in the 2d and 3d books, and in the omiſſion of a ſection or two relating ſolely to ſome Latin ways of ſpeaking in the civil law. He has ſometimes inſerted a ſhort ſentence, or added a note or two, to make ſome points clearer. He needs the reader's indulgence too, if, in following the original pretty cloſely, he ſometimes makes ſentences too long, or not ſo ſmooth and eaſy as our native tongue would require.

CHOOSE the beſt courſe of life, and cuſtom will make it the moſt pleaſant. *Pythagoras.*

Aſſume to yourſelf to live like a perfect man, or one who has made great proficiency in philoſophy, and let it be an inviolable law, to act the part that appears moſt virtuous. *Epictetus.*

Other animals are committed to the government of men, but God has committed men to the government of their own natural conſcience. This governor we never ſhould diſobey; for it is offenſive to God, and makes us enemies to the conſcience within us. *Epictet. Fragm.*

Chooſe rather to correct your own paſſions, than to be corrected and puniſhed on their account. *The ſame author.*

In this one thing delight and reſt yourſelf, in going on conſtantly from one ſocial action to another with remembrance of the Deity. *Marcus Antonin.*

In every deſign or attempt, whether great or ſmall, we ought to invoke God. *Plato.*

Give joy to the immortal Gods and thoſe that love you. *An unknown Poet in Antonin.*

TO THE

STUDENTS IN UNIVERSITIES.

THE celebrated diviſion of philoſophy among the ancients was into the rational *or* logical, *the* natural *and the* moral. *Their moral philoſophy contained theſe parts,* ethicks *taken more ſtrictly, teaching the nature of virtue and regulating the internal diſpoſitions; and the knowledge of the* law of nature. *This latter contained,* 1. *the doctrine of* private rights, *or the laws obtaining in natural liberty.* 2. Oeconomicks, *or the laws and rights of the ſeveral members of a family; and* 3. Politicks, *ſhewing the various plans of civil government, and the rights of ſtates with reſpect to each other. The following books contain the elements of theſe ſeveral branches of moral philoſophy; which if they are carefully ſtudied, may give the youth an eaſier acceſs to the well known and admired works either of the ancients,* Plato, Ariſtotle, Xenophon, Cicero; *or of the moderns,* Grotius Cumberland, Puffendorf, Harrington *and others, upon this branch of philoſophy.*

The learned will at once diſcern how much of this compound is taken from the writings of others, from Cicero *and* Ariſtotle; *and to name no other moderns, from* Puffendorf's *ſmaller work,* de Officio Hominis et Civis, *which that worthy and ingenious man the late Profeſſor* Gerſchom Carmichael *of Glaſgow, by far the beſt commentator on that book, has ſo ſupplied and corrected that the notes are of much more value than the text. The reaſons of my undertaking to compoſe anew a compend of this branch of philoſophy, after ſo many compends have been publiſhed by very learned men, were theſe; Every teacher muſt uſe his own judgment on theſe ſubjects, uſe his own method, and that diſpoſition of the ſeveral parts, and*

thoſe arguments which ſeem to him of greateſt force, beſt ſuited to the apprehenſions of the ſtudents, and apteſt to touch their hearts on ſuch ſubjects. And as the method and order which pleaſed me moſt is pretty different from what has of late prevailed; if it can be of any advantage in education, it muſt be of uſe to the ſtudents to have in their hands an abridgment, containing the method and the principal heads of argument, to recal to their memories the points more largely inſiſted upon in their lectures.

The deſign of Cicero's *books* de Officiis, *which are ſo very juſtly admired by all, has been miſtaken inconſiderately by ſome very ingenious men, who ſpeak of theſe books as intended for a compleat ſyſtem of morals or ethicks. Whereas* Cicero *expreſsly declares, that the doctrine concerning* virtue, *and the* ſupreme good, *which is the principal part of ethicks, is to be found elſewhere. Nay in his own books* de Finibus *and* Tuſculan queſtions, *he had previouſly treated theſe ſubjects more copiouſly.* * *And he tells us expreſsly,* † *that in his book* de Officiis *he follows the* Stoicks, *and uſes their way of treating this ſubject. Now it is well known that the Stoicks made ſuch difference between* virtue *which they counted the ſole good, and the* officia, *or external duties of life, that they counted theſe duties among the* things indifferent, *neither morally good nor evil.* ‡ *The deſign*

* As we find from *Cicero*'s firſt book *de Finib.* that *Brutus* had wrote a book *de Virtute* addreſſed to *Cicero*; this might be the reaſon why no book of *Cicero*'s bears ſuch a title; though it is manifeſt to any who read the books *de Finibus* and the *Tuſculan queſtions*, that the fundamental doctrine of morals is copiouſly delivered in them, and preſuppoſed in the books *de Officiis*, and paſſed over in a ſection or two.

† See Book I. ch. 1, 2. and Book III. ch. 3.

‡ Nay he alſo declares I. iii. c. 3. that he writes only *de mediis officiis*, which might be performed both by the *wiſe* and the *unwiſe*; and yet in the latter they allowed no virtue. Beſides the antients generally delivered all the *juriſprudentia naturalis*, and their doctrine about civil government in their *politica*, or books *de legibus*, which there is little or nothing in the books *de officiis* though, theſe are parts of the moral philoſophy of the antients.

then of theſe books de Officiis *is this; to ſhew how perſons in higher ſtations, already well inſtructed in the fundamentals of moral philoſophy, ſhould ſo conduct themſelves in life, that in perfect conſiſtence with virtue they may obtain great intereſt, power, popularity, high offices and glory.*

In the ſecond impreſſion of this book ſome few additions ſeemed neceſſary and ſeveral amendments. The author once intended to have made reference all along to the more eminent writers, antient or modern, who treated the ſeveral ſubjects. But conſidering that this could be of no uſe except to thoſe who have the cited books at hand, and that ſuch could eaſily by their indexes find the correſponding places for themſelves: he ſpared himſelf that diſagreeable and unneceſſary labour. All who have looked into ſuch ſubjects know that the general doctrine and foundations of morals may be found in the antients above mentioned, and in Dr. Cumberland, *and in Lord* Shaftesbury: *and that ſcarce any queſtion of the law of nature and nations is not to be found in* Grotius, Puffendorf, *eſpecially with* Barbeyrac's *copious notes.* Harrington, Lock, *or* Bynkerſhoek, *to mention no more. Nay in* Barbeyrac *one finds the principal authors who have publiſhed large diſſertations on particular heads. Such as want more full diſcuſſions of any ſuch points, muſt have recourſe to theſe authors.*

Theſe elementary books are for your uſe who ſtudy at Univerſities and not for the learned. When you have conſidered them well, go on to greater and more important works. Go to the grand fountains of all the ſciences, of all elegance; the inventers and improvers of all ingenious arts, the Greek and Roman writers: and while you are drawing from them what knowledge you can, have recourſe alſo to yet purer fountains, the holy Scriptures, *which alone give to ſinful mortals any ſure hopes of an happy immortality; that you may adorn your ſouls with every virtue, prepare yourſelves for every honourable office in life, and quench that manly and laudable thirſt you ſhould have after knowledge. Let not phil-*

ſophy reſt in ſpeculation, let it be a medicine for the diſorders of the ſoul, freeing the heart from anxious ſolicitudes and turbulent deſires; and diſpelling its fears: let your manners, your tempers, and conduct be ſuch as right reaſon requires. Look not upon this part of philoſophy as matter of oſtentation, or ſhew of knowledge, but as the moſt ſacred law of life and conduct, which none can deſpiſe with impunity, or without impiety toward God: and whoſe precepts, whoever ſeriouſly endeavours to obey, as far as he is capable, ſhews the trueſt worth and excellence, and the higheſt wiſdom; and is truly the moſt proſperous as to his greateſt intereſts in life.

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A SHORT INTRODUCTION TO Moral Philoſophy.

BOOK I.

THE ELEMENTS OF ETHICKS.

CHAP. I.

Of HUMAN NATURE *and its* PARTS.

1. AS all other arts have in view ſome good to be obtained, as their proper end. Moral Philoſophy, which is the art of regulating the whole of life, muſt have in view the noble end; ſince it undertakes, as far as human reaſon can go, to lead us into that courſe of life which is moſt according to the intention of nature, and moſt happy, to which end, whatever we can obtain by other arts ſhould be ſubſervient. Moral Philoſophy, therefore, muſt be one of theſe commanding arts which directs how far the other arts are to be purſued. And ſince all Philoſophers, even of the moſt oppoſite ſchemes, agree in words at leaſt, that "Happineſs "either conſiſts in virtue and virtuous offices, or is

" to be obtained and ſecured by them:" The chief points to be enquired into in Morals muſt be, what courſe of life is according to the intention of nature? wherein conſiſts happineſs? and what is virtue?

All ſuch as believe that this univerſe, and human nature in particular, was formed by the wiſdom and counſel of a Deity, muſt expect to find in our ſtructure and frame ſome clear evidences, ſhewing the proper buſineſs of mankind, for what courſe of life, what offices we are furniſhed by the providence and wiſdom of our Creator, and what are the proper means of happineſs. We muſt, therefore, ſearch accurately into the conſtitution of our nature, to ſee what ſort of creatures we are; for what purpoſes nature has formed us; what character God our Creator requires us to maintain. Now the intention of nature, with reſpect to us, is beſt known by examining what theſe things are which our natural ſenſes or perceptive powers recommend to us, and what the moſt excellent among them? and next, what are the aims of our ſeveral natural deſires, and which of them are of greateſt importance to our happineſs? In this inquiry we ſhall lightly paſs over ſuch natural powers as are treated of in other arts, dwelling chiefly upon thoſe which are of conſequence in regulating our morals.

In this art, as in all others, we muſt proceed from the ſubjects more eaſily known, to thoſe that are more obſcure, and not follow the priority of nature, or the dignity of the ſubjects; and therefore don't deduce our firſt notions of duty from the Divine Will, but from the conſtitution of our nature, which is more immediately known; that from the full knowledge of it, we may diſcover the deſign, intention, and will of our Creator, as to our conduct. Nor will we omit ſuch obvious evidences of our duty as ariſe even from the conſiderations of our preſent ſecular intereſt; though it will, perhaps, hereafter appear, that [illegible] virtue muſt have

ſome nobler ſpring than any deſires of worldly pleaſures or intereſts.

II. FIRST, then, Human nature conſiſts of ſoul and body, each of which has its proper powers, parts, or faculties. The inquiry into the body is more eaſy, and belongs to the Phyſicians. We only tranſiently obſerve, that it is plainly of a more noble * ſtructure than that of other animals. It has not only organs of ſenſe, and all parts requiſite either for the preſervation of the individual or of the ſpecies, but alſo ſuch as are requiſite for that endleſs variety of action and motion, which a rational and inventive ſpirit may intend, and theſe organs formed with exquiſite art. One cannot omit the dignity of its erect form, ſo plainly fitted for enlarged contemplation; the eaſy and ſwift motions of the joints; the curious ſtructure of the hand, that great inſtrument of all ingenious arts; the countenance, ſo eaſily variable as to exhibit to us all the affections of the ſoul; and the organs of voice, ſo nicely fitted for ſpeech in all its various kinds, and the pleaſure of harmony. Theſe points are more fully explained by Anatomiſts.

This curious frame of the human body we all ſee to be fading and periſhing; needing daily new recruits by food, and conſtant defence againſt innumerable dangers from without, by cloathing, ſhelter, and other conveniencies. The charge of it, therefore, is committed to a ſoul endued with forethought and ſagacity, which is the other, and by far the nobler part in our conſtitution.

III. THE parts or powers of the ſoul, which preſent us with a more glorious view, are of various kinds: † but they are all reducible to two

* See this explained by Dr. Cumberland, *de Lege Naturae.*

† Concerning human nature, beſide *Ariſtotle*'s moral writings, *Nemeſius de homine*, *Locke*, and *Malebranch*, many excellent obſervations are made in *Cicero*'s 5th book *de finibus*, *Arrian*, and *Lord Shafteſbury*'s *Inquiry*, and *Rhapſody*.

claſſes, the *Underſtanding* and the *Will*. The former contains all the powers which aim at knowledge; the other all our deſires purſuing happineſs and eſchewing miſery.

We ſhall but briefly mention the ſeveral operations of the underſtanding, becauſe they are ſufficiently treated of in Logicks and Metaphyſicks. The firſt in order are the *ſenſes*: under which name we include every "conſtitution or power of the ſoul, "by which certain feelings, ideas, or perceptions, "are raiſed upon certain objects preſented." Senſes are either *external*, or *internal* and mental. The external depend on certain organs of the body, ſo conſtituted that upon any impreſſion made on them, or motion excited, whether by external impulſes or internal forces in the body, a certain feeling or notion is raiſed in the ſoul. The feelings are generally either agreeable, or at leaſt not uneaſy, which enſue upon ſuch impreſſions and changes as are uſeful or not hurtful to the body: but uneaſy feelings enſue upon thoſe which are deſtructive or hurtful.

Though bodily pleaſure and pain affect the ſoul pretty vehemently, yet we ſee they are of ſhort duration and fleeting; and ſeldom is the bare remembrance of paſt bodily pleaſures agreeable, or the remembrance of paſt pain in itſelf uneaſy, when we apprehend no returns of them.

By theſe ſenſes we acquire the firſt notions of *good* and *evil*. Such things as excite grateful ſenſations of this kind we call *good*; what excites painful or uneaſy ſenſations, we call *evil*. Other objects alſo, when perceived by ſome other kinds of ſenſes, exciting alſo agreeable feelings, we likewiſe call good, and their contraries evil. *Happineſs* in general, is "a ſtate wherein there is plenty of ſuch "things as excite theſe grateful ſenſations of "one kind or other, and we are free from "pain." *Miſery* conſiſts in "frequent and

" laſting ſenſations of the painful and diſagreeable " ſorts, excluding all grateful ſenſations."

There are alſo certain perceptions dependent on bodily organs, which are of a middle nature as to pleaſure or pain, having a very ſmall degree of either joined immediately with them: theſe are the perceptions by which we diſcern the primary qualities of external objects and any changes befalling them, their magnitude, figure, ſituation, motion or reſt: all which are diſcerned chiefly by *ſight* or *touch*, and give us neither pleaſure nor pain of themſelves; tho' they frequently intimate to us ſuch events as occaſion deſires or averſions, joys or ſorrows.

Bodily pleaſures and pains, ſuch as we have in common with the brutes, are of ſome importance to our happineſs or miſery. The other claſs of perceptions, which inform us of the qualities and ſtates of things external to us, are of the higheſt uſe in all external action, in the acquiring of knowledge, in learning and practiſing the various arts of life.

Both theſe kinds of external perceptions may be called *direct* and *antecedent*, becauſe they pre-ſuppoſe no previous ideas. But there's another claſs of perceptions employed about the objects of even the external ſenſes, which for diſtinction we call *reflex* or *ſubſequent*, becauſe they naturally enſue upon other ideas previouſly received: of theſe preſently. So much for external ſenſation.

IV. INTERNAL ſenſes are thoſe powers or determinations of the mind, by which it perceives or is conſcious of all within itſelf, its actions, paſſions, judgments, wills, deſires, joys, ſorrows, purpoſes of action. This power ſome celebrated writers call *conſciouſneſs* or *reflection*, which has for its objects the qualities, actions or ſtates of the mind itſelf, as the external ſenſes have things external. Theſe two claſſes of ſenſation, external and internal, furniſh our whole ſtore of ideas, the materials about which we exerciſe that nobleſt power of *reaſoning* peculiar to the

human ſpecies. This alſo deſerves a fuller explication, but it belongs to Logick.

'Tis by this power of reaſon, that the ſoul perceives the relations and connexions of things, and their conſequences and cauſes; infers what is to enſue, or what preceded; can diſcern reſemblances, conſider in one view the preſent and the future, propoſe to itſelf a whole plan of life, and provide all things requiſite for it.

By the exerciſe of reaſon it will eaſily appear, that this whole univerſe was at firſt framed by the contrivance and counſel of a moſt perfect intelligence, and is continually governed by the ſame; that it is to him mankind owe their pre-eminence above other animals in the power of reaſon, and in all theſe excellencies of mind or body, which clearly intimate to us the will of our munificent Creator and Preſerver; and ſhew us what ſort of offices, what courſe of life he requires of us as acceptable in his ſight.

V. SINCE then every ſort of good which is immediately of importance to happineſs, muſt be perceived by ſome immediate power or ſenſe, antecedent to any opinions or reaſoning: (for 'tis the buſineſs of reaſoning to compare the ſeveral ſorts of good perceived by the ſeveral ſenſes, and to find out the proper means for obtaining them:) we muſt therefore carefully inquire into the ſeveral ſublimer perceptive powers or ſenſes; ſince 'tis by them we diſcover what ſtate or courſe of life beſt anſwers the intention of God and nature, and wherein true happineſs conſiſts. But we muſt premiſe ſome brief conſideration of the *Will*, becauſe the motions of the will, our affections, deſires and purpoſes, are the objects of theſe more ſubtile ſenſes, which perceive various qualities and important differences among them.

As ſoon as the mind has got any notion of good or evil by grateful or uneaſy ſenſations of any kind, there naturally ariſe certain motions of the

Will, diſtinct from all ſenſation; to wit, *Deſires* of good, and *Averſions* to evil. For there conſtantly appears, in every rational being, a ſtable eſſential propenſity to deſire its own happineſs, and whatever ſeems to tend to it, and to avoid the contraries which would make it miſerable. And altho' there are few who have ſeriouſly inquired what things are of greateſt importance to happineſs; yet all men naturally deſire whatever appears to be of any conſequence to this end, and ſhun the contrary: when ſeveral grateful objects occur, all which it cannot purſue together, the mind while it is calm, and under no impulſe of any blind appetite or paſſion, purſues that one which ſeems of moſt importance. But if there ſhould appear in any object a mixture of good and evil, the ſoul will purſue or avoid it, according as the good or the evil appears ſuperior.

Beſide theſe two calm primary motions of the Will, *deſire* and *averſion*, there are other two commonly aſcribed to it, to wit, *Joy* and *Sorrow*. But theſe two are rather to be called new ſtates, or finer feelings or ſenſes of the ſoul, than motions of the will naturally exciting to action. In this manner however we make up theſe four ſpecies mentioned by the antients, all referred to the *Will*, or *rational appetite*: when good to be obtained is in view, there ariſes *Deſire*; when evil to be repelled, *Averſion*: when good is obtained or evil avoided, ariſes *Joy*; when good is loſt, or evil befallen us, *Sorrow*.

VI. BUT beſide the calm motions or affections of the ſoul and the ſtable deſire of happineſs, which employ our reaſon for their conductor, there are alſo others of a very different nature; certain vehement turbulent Impulſes, which upon certain occurrences naturally agitate the ſoul, and hurry it on with a blind inconſiderate force to certain actions, purſuits, or efforts to avoid, exerted about ſuch things as we have never deliberately determined to

be of conſequence to happineſs or miſery. Any one may underſtand what we mean by theſe blind impetuous motions who reflects on what he has felt, what violent propenſities hurried him on, when he was influenced by any of the keener paſſions of luſt, ambition, anger, hatred, envy, love, pity, or fear; without any previous deliberate opinion about the tendency of theſe objects or occurrences which raiſed theſe ſeveral paſſions to his happineſs or miſery. Theſe paſſions are ſo far from ſpringing from the previous calm deſire of happineſs, that we find them often oppoſing it, and drawing the ſoul contrary ways.

Theſe ſeveral paſſions the antients reduce to two claſſes, to wit, the *paſſionate Deſires*, and the correſpondent *Averſions*; both which they teach to be quite diſtinct from the Will; the former aiming at the obtaining ſome pleaſure or other, and the latter the warding off ſomething uneaſy. Both are by the ſchoolmen ſaid to reſide in the *ſenſitive appetite*; which they ſubdivide into the * *concupiſcible* and *iraſcible*; and their impulſes they call *Paſſions*. The *ſenſitive appetite* is not a very proper name for theſe determinations of the ſoul, unleſs the ſchoolmen would uſe the word *ſenſes* in a more extenſive ſignification, ſo as to include many perceptive powers of an higher ſort than the bodily ſenſes. For 'tis plain that many of the moſt turbulent paſſions ariſe upon certain occurrences which affect none of the external ſenſes; ſuch as ambition, congratulation, malicious joy, the keen paſſions towards glory and power, and many others, with the turbulent averſions to their contraries. The ſchoolmen however refer to this *ſenſitive appetite* all the vehement inconſiderate motions of the will, which are attended with confuſed uneaſy ſenſations, whatever their occaſions be.

* ἐπ θυμία και θυμὸς.

Of theſe paſſions there are four general claſſes: ſuch as purſue ſome apparent good are called *paſſionate Deſires* or *Cupidity*; ſuch as tend to ward off evil are called *Fears*, or *Anger*: ſuch as ariſe upon obtaining what was deſired or the eſcaping evil, are turbulent *Joys*; and what ariſe upon the loſs of good, or the befalling of evil, *Sorrows*. [Nor have we in our language words appropriated ſo as to diſtinguiſh between the ſeveral calm and paſſionate motions of the will.] Of each claſs there are many ſubdiviſions according to the variety of objects about which they are employed, which will be further explained hereafter.

VII. THERE's alſo another diviſion of the motions of the will whether calm or paſſionate, according as the advantage or pleaſure in view is for ourſelves or others. That there is among men ſome diſintereſted goodneſs, without any views to intereſts of their own, but purſuing ultimately the intereſts of perſons beloved, muſt be evident to ſuch as examine well their own hearts, the motions of friendſhip or natural affection; and the love and zeal we have for worthy and eminent characters: or to ſuch as obſerve accurately the cares, the earneſt deſires of perſons on their death-beds, and their friendly offices to ſuch as they love even with their laſt breath: or, in the more heroic characters, their great actions and deſigns, and their marching willingly and deliberately to certain death for their children, their friends, or their country.

The diſintereſted affections are either calm, or turbulent and paſſionate, even as the ſelfiſh, in which one purſues what ſeems advantageous or pleaſant to himſelf. And the ſeveral affections or paſſions, whether more ſimple or complicated, have a variety of names as their objects are various, as they regard one's ſelf, or regard others, and their characters, fortunes, endearments, and the ſeveral ſocial bonds with us or with each other; or the enmities or diſſentions by which they are ſet at va-

riance; or as their former conduct or deſigns have occaſioned theſe events which excite our paſſions.

Theſe particular kind paſſions are quite different from any calm general good-will to mankind, nor do they at all ariſe from it. They naturally ariſe, without premeditation or previous volition, as ſoon as that ſpecies or occaſion occurs which is by nature adapted to raiſe them. We ſhall have a more proper place to explain them a little further, after we have mentioned the more ſublime perceptive powers; without the knowledge of which many motions of the will muſt remain unknown.

What any ſenſe immediately reliſhes is deſired for itſelf ultimately; and happineſs muſt conſiſt in the poſſeſſion of all ſuch objects, or of the moſt important and excellent ones. But when by the uſe of our reaſon we find that many things which of themſelves give no pleaſure to any ſenſe, yet are the neceſſary means of obtaining what is immediately pleaſant and deſirable, all ſuch *proper means* ſhall alſo be deſired, on account of their *ends*. Of this claſs are, an extenſive influence in ſociety, riches, and power.

But as beſide the ſeveral particular paſſions of the ſelfiſh kind there is deeply rooted in the ſoul a ſteddy propenſity or impulſe toward its own higheſt happineſs, which every one upon a little reflection will find, by means whereof he can repreſs and govern all the particular ſelfiſh paſſions, when they are any way oppoſite to it; ſo whoſoever in a calm hour takes a full view of human nature, conſidering the conſtitutions, tempers, and characters of others, will find a like general propenſion of ſoul to wiſh the univerſal proſperity and happineſs of the whole ſyſtem. And whoſoever by frequent impartial meditation cultivates this extenſive affection, which the inward ſenſe of his ſoul conſtantly approves in the higheſt degree, may make it ſo ſtrong that it will be able to reſtrain and govern all other

affections, whether they regard his own happineſs or that of any ſmaller ſyſtem or party.

VIII. HAVING given this ſummary view of the Will, we next conſider thoſe ſenſes we call *reflex* or ſubſequent, by which certain new forms or perceptions are received, in conſequence of others previouſly obſerved by our external or internal ſenſes; and ſome of them enſuing upon obſerving the fortunes of others, or the events diſcovered by our reaſon, or the teſtimony of others. We ſhall only tranſiently mention ſuch of them as are not of much importance in morals, that we may more fully explain thoſe which are more neceſſary.

The external ſenſes of Sight and Hearing we have in common with the Brutes: but there's ſuperadded to the human Eye and Ear a wonderful and ingenious Reliſh or Senſe, by which we receive ſubtiler pleaſures; in material forms *gracefulneſs*, *beauty* and *proportion*; in ſounds *concord* and *harmony*; and are highly delighted with obſerving exact *Imitation* in the works of the more ingenious arts, Painting, Statuary and Sculpture, and in motion and Action; all which afford us far more manly pleaſures than the external ſenſes. Theſe are the Pleaſures to which many arts both mechanic and liberal are ſubſervient; and men purſue them even in all that furniture, thoſe utenſils, which are otherways requiſite for the conveniency of life. And the very *grandeur* and *novelty* of objects excite ſome grateful perceptions not unlike the former, which are naturally connected with and ſubſervient to our deſires of knowledge. Whatever is grateful to any of theſe perceptive powers is for itſelf deſirable, and may on ſome occaſions be to us an ultimate end. For, by the wiſe contrivance of God, our ſenſes and appetites are ſo conſtituted for our happineſs, that what they immediately make grateful is generally on other accounts alſo uſeful, either to ourſelves or to mankind.

Among theſe more humane pleaſures, we muſt not omit that enjoyment moſt peculiarly ſuited to human nature, which ariſes from the diſcovery of Truth, and the enlarging of our knowledge; which is ultimately deſirable to all; and is joyful and pleaſant in proportion to the dignity of the ſubject, and the evidence or certainty of the diſcovery.

IX. THERE are other ſtill more noble ſenſes and more uſeful: ſuch is that *ſympathy* or fellow-feeling, by which the ſtate and fortunes of others affect us exceedingly, ſo that by the very power of nature, previous to any reaſoning or meditation, we rejoice in the proſperity of others, and ſorrow with them in their misfortunes; as we are diſpoſed to mirth when we ſee others chearful, and to weep with thoſe that weep, without any conſideration of our own Intereſts. Hence it is that ſcarce any man can think himſelf ſufficiently happy tho' he has the fulleſt ſupplies of all things requiſite for his own uſe or pleaſure: he muſt alſo have ſome tolerable ſtore for ſuch as are dear to him; ſince their miſery or diſtreſſes will neceſſarily diſturb his own happineſs.

By means of this ſympathy and of ſome diſintereſted affections, it happens, as by a ſort of contagion or infection, that all our pleaſures, even theſe of the loweſt kind, are ſtrangely increaſed by their being ſhared with others. There's ſcarce any chearful or joyful commotion of mind which does not naturally require to be diffuſed and communicated. Whatever is agreeable, pleaſant, witty, or jocoſe, naturally burns forth, and breaks out among others, and muſt be imparted. Nor on the other hand is there any thing more uneaſy or grievous to a man than to behold the diſtreſſing toils, pains, griefs, or miſery of others, eſpecially of ſuch as have deſerved a better Fate.

X. BUT further: that man was deſtined by nature for action, plainly appears by that multitude

of active inſtincts and deſires natural to him; which is further confirmed by that deeply implanted ſenſe approving or condemning certain actions. The ſoul naturally deſires action; nor would one upon any terms conſent to be caſt into a perpetual ſtate of ſleep, tho' he were aſſured of the ſweeteſt dreams. If a ſleep like that of * *Endymion* were to befal ourſelves or any perſon dear to us, we would look upon it as little better than Death. Nature hath therefore conſtituted a certain *ſenſe* or natural *taſte* to attend and regulate each active power, approving that exerciſe of it which is moſt agreeable to nature and conducive to the general Intereſt. The very brute animals, tho' they have none of theſe reflex ſenſes we mentioned, yet by certain inſtincts, even previouſly to any experience or proſpect of pleaſure, are led, each according to its kind, to its natural actions, and finds in them its chief ſatisfactions. Human nature is full of like inſtincts; but being endued with reaſon and the power of reflecting on their own ſentiments and conduct, they have alſo various reflex ſenſes, with a nice diſcernment and reliſh of many things which could not be obſerved by the groſſer ſenſes, eſpecially of the exerciſe of their natural powers. By theſe ſenſes that application of our natural powers is immediately approved which is moſt according to the intention of nature, and which is moſt beneficial either to the individual or to mankind; and all like application by others is in like manner approved, and thus made matter of joy and glorying. In the very poſture and motion of the body, there is ſomething which immediately pleaſes, whether in our own, or that of others: in the voice and geſture, and the various abilities of body or mind, in the ingenious arts of imitation, in external actions and exerciſes, whether about ſerious buſineſs or recreations, we diſ-

* Who in the old fable continued to live, but never awoke out of a ſleep he was caſt into by Diana.

cern ſomething graceful and manly, and the contrary ungraceful and mean, even without any appearance of moral virtue in the one, or vice in the other. But ſtill it is chiefly in theſe abilities and exerciſes which are peculiar to mankind that grace and dignity appear; ſuch as we have in common with beaſts appear of leſs dignity. And among the human purſuits which yet are different from moral virtues, the purſuits of knowledge are the moſt venerable. We are all naturally inquiſitive and vehemently allured by the diſcovery of truth. Superior knowledge we count very honourable; but to miſtake, to err, to be ignorant, to be impoſed upon, we count evil and ſhameful.

But to regulate the higheſt powers of our nature, our affections and deliberate deſigns of action in important affairs, there's implanted by nature the nobleſt and moſt divine of all our ſenſes, that *Conſcience* by which we diſcern what is graceful, becoming, beautiful and honourable in the affections of the ſoul, in our conduct of life, our words and actions. By this ſenſe, a certain turn of mind or temper, a certain courſe of action, and plan of life is plainly recommended to us by nature; and the mind finds the moſt joyful feelings in performing and reflecting upon ſuch offices as this ſenſe recommends; but is uneaſy and aſhamed in reflecting upon a contrary courſe. Upon obſerving the like honourable actions or deſigns in others, we naturally favour and praiſe them; and have an high eſteem, and good will, and endearment toward all in whom we diſcern ſuch excellent diſpoſitions: and condemn and deteſt thoſe who take a contrary courſe. What is approved by this ſenſe we count *right* and *beautiful*, and call it *virtue*; what is condemned, we count *baſe* and *deformed* and *vitious*.

The Forms which move our approbation are, all kind affections and purpoſes of action; or ſuch propenſions, abilities, or habits of mind as naturally flow from a kind temper, or are connected

with it; or ſhew an higher taſte for the more refined enjoyments, with a low regard to the meaner pleaſures, or to its own intereſts; or laſtly, ſuch diſpoſitions as plainly exclude a narrow contracted ſelfiſhneſs, aiming ſolely at its own intereſts or forbid pleaſures. The forms diſapproved are either this immoderate ſelfiſhneſs; or a peeviſh, angry, envious or ill-natured temper, leading us naturally to hurt others; or a mean ſelfiſh ſenſuality.

That this ſenſe is implanted by nature, is evident from this, that in all ages and nations certain tempers and actions are univerſally approved and their contraries condemned, even by ſuch as have in view no intereſt of their own Many artful accounts of all this as flowing from views of intereſt, have been given by ingenious men; but whoſoever will examine theſe accounts, will find that they rather afford arguments to the contrary, and lead us at laſt to an immediate natural principle prior to all ſuch views. The agent himſelf perhaps may be moved by a view of advantages of any ſort accruing only to himſelf, to approve his own artful conduct; but ſuch advantages won't engage the approbation of others: and advantages accruing to others would never engage the agent, without a moral ſenſe, to approve ſuch actions. How much ſoever the agent may be moved by any views of his own intereſt; yet this, when 'tis known, plainly diminiſhes the beauty of the action, and ſometimes quite deſtroys it. Men approve chiefly that beneficence which they deem gratuitous and diſintereſted; what is pretended, and yet only from views of private intereſt, they abhor. When the agent appears to have in view the more obvious intereſts of getting glory, popularity, or gainful returns, there appears little or nothing honourable. 'Tis well known that ſuch advantages are attainable by external actions, and hypocritical ſhews, without any real inward goodneſs.

But further, does not every good action appear the more honourable and laudable the more toilſome, dangerous or expenſive it was to the undertaker? 'Tis plain, therefore, that a virtuous courſe is not approved under that notion of its being *profitable to the agent*. Nor is it approved under the notion of *profitable to thoſe who approve it*, for we all equally praiſe and admire any glorious actions of antient Heroes, from which we derive no advantage, as the like done in our own times. We approve even the virtues of an enemy that are dreaded by us, and yet condemn the uſeful ſervices of a Traytor, whom for our own intereſt we have bribed into perfidy. Nay the very Diſſolute frequently diſlike the vices of others which are ſubſervient to their own.

Nor can it be alleged that the notion under which we approve actions is their tendency to obtain applauſe or rewards: for this conſideration could recommend them only to the agent. And then, whoever expects praiſe muſt imagine that there is ſomething in certain actions or affections, which in its own nature appears laudable or excellent both to himſelf and others: whoever expects rewards or returns of good offices, muſt acknowledge that goodneſs and beneficence naturally excite the love of others. None can hope for Rewards from God without owning that ſome actions are acceptable to God in their own nature; nor dread Divine puniſhments, except upon a ſuppoſition of a natural *demerit* in evil actions. When we praiſe the divine Laws as holy, juſt and good, 'tis plainly on this account, that we believe they require what is antecedently conceived as morally good, and prohibit the contrary, otherwiſe theſe Epithets would import nothing laudable.

That this ſenſe is implanted by nature, and that thus affections and actions of themſelves, and in their own nature, muſt appear to us right, honourable, beautiful and laudable, may appear from

many of the moſt natural affections of the Will, both calm and paſſionate, which are naturally raiſed without any views of our own advantage, upon obſerving the conduct and characters and fortunes of others; and thus plainly evidence what Temper nature requires in us. Of theſe we ſhall ſpeak preſently. This moral ſenſe diffuſes itſelf through all conditions of life, and every part of it; and inſinuates itſelf into all the more humane amuſements and entertainments of mankind. Poetry and Rhetorick depend almoſt entirely upon it; as do in a great meaſure the arts of the Painter, Statuary, and Player. In the choice of friends, wives, comrades, it is all in all; and it even inſinuates itſelf into our games and mirth. Whoſoever weighs all theſe things fully will agree with *Ariſtotle* "That as the "Horſe is naturally fitted for ſwiftneſs, the Hound "for the chace, and the Ox for the plough, ſo "man, like a ſort of mortal Deity, is fitted by na"ture for knowledge, and action."

Nor need we apprehend, that according to this ſcheme, which derives all our moral notions from a ſenſe, implanted however in the ſoul and not dependent on the body, the dignity of virtue ſhould be impaired. For the conſtitution of nature is ever ſtable and harmonious; nor need we fear that any change in our conſtitution ſhould alſo change the nature of virtue, more than we ſhould dread the diſſolution of the Univerſe by a change of the great principle of Gravitation. Nor will it follow from this ſcheme, that all ſorts of affections and actions were originally indifferent to the Deity, ſo that he could as well have made us approve the very contrary of what we now approve, by giving us ſenſes of a contrary nature. For if God was originally omniſcient, he muſt have foreſeen, that by his implanting kind affections in an active ſpecies, capable of profiting or hurting each other, he would conſult the general good of all; and that implant-

ing contrary affections would neceſſarily have the contrary effect: in like manner by implanting a ſenſe which approved all kindneſs and beneficence, he foreſaw that all theſe actions would be made immediately agreeable to the agent, which alſo on other accounts were profitable to the ſyſtem; whereas a contrary ſenſe (whether poſſible or not we ſhall not determine) would have made ſuch conduct immediately pleaſing, as muſt in other reſpects be hurtful both to the agent and the ſyſtem. If God therefore was originally wiſe and good, he muſt neceſſarily have preferred the preſent conſtitution of our ſenſe approving all kindneſs and beneficence, to any contrary one; and the nature of virtue is thus as immutable as the divine Wiſdom and Goodneſs. Caſt the conſideration of theſe perfections of God out of this queſtion, and indeed nothing would remain certain or immutable.

XI. THERE are however very different degrees of approbation and condemnation, ſome ſpecies of virtues much more beautiful than others, and ſome kinds of vices much more deformed. Theſe maxims generally hold "Among the kind motions of the Will of equal extent, the calm and ſtable are more beautiful than the turbulent or paſſionate." And when we compare calm affections among themſelves, or the paſſionate among themſelves, "the "more extenſive are the more amiable, and theſe "moſt excellent which are moſt extenſive, and pur-"ſue the greateſt happineſs of the whole ſyſtem of "ſenſitive nature."

It was already obſerved that our eſteem of virtue in another, cauſes a warmer affection of good-will towards him: now as the ſoul can reflect on all its powers, diſpoſitions, affections, deſires, ſenſes, and make them the objects of its contemplation; a very high reliſh for moral excellence, a ſtrong deſire of it, and a ſtrong endearment of heart toward all in whom we diſcern eminent virtues, muſt itſelf be approved as a moſt virtuous diſpoſition; nor is there

any more lovely than the higheſt love towards the higheſt moral excellency. Since then God muſt appear to us as the Supreme excellence, and the inexhauſtible fountain of all good, to whom mankind are indebted for innumerable benefits moſt gratuitouſly beſtowed; no affection of ſoul can be more approved than the moſt ardent love and veneration towards the Deity, with a ſteady purpoſe to obey him, ſince we can make no other returns, along with an humble ſubmiſſion and reſignation of ourſelves and all our intereſts to his will, with confidence in his goodneſs, and a conſtant purpoſe of imitating him as far as our weak nature is capable.

The objects of our condemnation are in like manner of different degrees. Ill-natured unkind affections and purpoſes are the more condemned the more ſtable and deliberate they are. Such as flow from any ſudden paſſionate deſire are leſs odious; and ſtill more excuſable are thoſe which flow from ſome ſudden fear or provocation. What we chiefly diſapprove is that ſordid ſelfiſhneſs which ſo engroſſes the man as to exclude all human ſentiments of kindneſs, and ſurmounts all kind affections; and diſpoſes to any ſort of injuries for one's own intereſts.

We juſtly alſo reckon impiety toward God to be the greateſt depravation of mind, and moſt unworthy of a rational Being, whether it appears in a direct contempt of the Deity; or in an entire neglect of him, ſo that one has no thoughts about him, no veneration, no gratitude toward him. Nor is it of any avail either to abate the moral excellence of Piety, or the deformity of Impiety, to ſuggeſt that the one cannot profit him, nor the other hurt him. For what our conſcience or moral ſenſe chiefly regards are the affections of the heart, and not the external effects of them. That man muſt be deemed corrupt and deteſtable who has not a grateful heart toward his benefactor, even when he can make no

returns: who does not love, praiſe and celebrate the virtues of even good men, tho' perhaps he has it not in his power to ſerve or promote them. Where there is a good heart, it naturally diſcovers itſelf in ſuch affections and expreſſions, whether one can profit thoſe he eſteems and loves or not. Theſe points are manifeſt to the inward ſenſe of every good man without any reaſoning.

XII. THIS nobler ſenſe, which nature has deſigned to be the guide of life, deſerves the moſt careful conſideration, ſince it is plainly the judge of the whole of life, of all the various powers, affections, and deſigns, and naturally aſſumes a juriſdiction over them; pronouncing that moſt important ſentence, that in the virtues themſelves, and in a careful ſtudy of what is beautiful and honourable in manners, conſiſts our true dignity, and natural excellence, and ſupreme happineſs. Thoſe who cultivate and improve this ſenſe find that it can ſtrengthen them to bear the greateſt external evils, and voluntarily to forfeit external advantages, in adhering to their duty towards their friends, their country, or the general intereſt of all: and that in ſo doing it is that they can thoroughly approve themſelves and their conduct. It likewiſe puniſhes, with ſevere remorſe and ſecret laſhes, ſuch as diſobey this natural government conſtituted in the ſoul, or omit, through any fear, or any proſpect of ſecular advantages, the duties which it requires.

That this Divine Senſe or Conſcience, naturally approving theſe more extenſive affections, ſhould be the governing power in man, appears both immediately from its own nature, as we immediately feel that it naturally aſſumes a right of judging, approving or condemning all the various motions of the ſoul; as alſo from this that every good man applauds himſelf, approves entirely his own temper, and is then beſt pleaſed with himſelf when he reſtrains not only the lower ſenſual appetites, but even the more ſublime ones of a ſelfiſh kind, or the more

narrow and contracted affections of love toward kindred, or friends, or even his country, when they interfere with the more extenſive intereſts of mankind, and the common proſperity of all. Our inward conſcience of right and wrong not only prefers the moſt diffuſive goodneſs to all other affections of ſoul, whether of a ſelfiſh kind, or of a narrower endearment: but alſo abundantly compenſates all loſſes incurred, all pleaſures ſacrificed, or expences ſuſtained on account of virtue, by a more joyful conſciouſneſs of our real goodneſs, and merited glory; ſince all theſe loſſes ſuſtained increaſe the moral dignity and beauty of virtuous offices, and recommend them the more to our inward ſenſe: * which is a circumſtance peculiar to this caſe, nor is the like found in any other ſenſe, when it conquers another of leſs power than its own. And further, whoever acts otherways cannot thoroughly approve himſelf if he examines well the inward ſenſe of his ſoul: when we judge of the characters and conduct of others, we find the ſame ſentiments of them: nay, this ſubordination of all to the moſt extenſive intereſts is what we demand from them; nor do we ever fail in this caſe to condemn any contrary conduct; as in our judgments about others we are un-

* What the Author here intends is obvious, and of ſuch importance as deſerves a fuller explication. In a voluptuous life the more a man has impaired his health, his fortune, his character, or the more he has obſtructed his progreſs in knowledge, or in the more elegant pleaſures, the more alſo he muſt condemn and be diſſatisfied with his own temper and conduct, and ſo muſt every obſerver. In the purſuits of honours and power, or the ſplendor of life, the more one has impaired his fortune or health, and the more of his natural pleaſures and enjoyments he has ſacrificed to theſe purpoſes, the more he muſt be diſſatisfied with his own meaſures, and be diſapproved by others. But in following the dictates of conſcience, in adhering to his duty and the practice of virtue, the greater ſacrifice he has made of all other enjoyments, the more he himſelf and all others approve his conduct and temper, and he anſwers the more compleatly the wiſhes and expectations of all who love and eſteem him.

der no byaſs from our private paſſions and intereſts. And therefore, altho' every event, diſpoſition, or action incident to men may in a certain ſenſe be called *natural*; yet ſuch conduct alone as is approved by this diviner faculty, which is plainly deſtined to command the reſt, can be properly called *agreeable*, or *ſuited to our nature*.

XIII. With this moral ſenſe is naturally connected that other of Honour and Shame, which makes the approbations, the gratitude, and eſteem of others who approve our conduct, matter of high pleaſure; and their cenſures, and condemnation, and infamy, matter of ſevere uneaſineſs; even altho' we ſhould have no hopes of any other advantages from their approbations, or fears of evil from their diſlike. For by this ſenſe theſe things are made good or evil immediately and in themſelves: and hence it is that we ſee many ſolicitous about a ſurviving fame, without any notion that after death they ſhall have any ſenſe of it, or advantage by it. Nor can it be ſaid * that we delight in the praiſes of others only, as they are a teſtimony to our virtue, and confirm the good opinion we may have of ourſelves: for we find that the very beſt of mankind, who are abundantly conſcious of their own virtues, and need no ſuch confirmation, yet have pleaſure in the praiſes they obtain.

That there's a natural ſenſe of honour and fame, founded indeed upon our moral ſenſe, or preſuppoſing it, but diſtinct from it and all other ſenſe, ſeems manifeſt from that natural modeſty, which diſcovers itſelf by the very countenance in bluſhing; which nature has plainly deſigned as a guardian not only to moral virtue, but to all decency in our whole deportment, and a watchful check upon all the motions of the lower appetites. And hence it is that this ſenſe is of ſuch importance in life, by frequently exciting men to what is honourable, and

* This is ſuggeſted by Ariſtotle *Ethic. ad Nicom* L. i. c. 5.

reſtraining them from every thing diſhonourable, baſe, flagitious, or injurious.

In theſe two ſenſes, of moral good and evil, and of honour and ſhame, mankind are more uniformly conſtituted than in the other ſenſes; which will be manifeſt if the ſame immediate forms or ſpecies of actions be propoſed to their judgment; that is, if they are conſidering the ſame affections of heart, whether to be approved or condemned, they would univerſally agree. If indeed they have contrary opinions of happineſs, or of the external means of promoting or preſerving it, 'tis then no wonder, however uniform their moral ſenſes be, that one ſhould approve of what another condemns. Or if they have contrary opinions about the divine Laws, ſome believing that God requires what others think he forbids, or has left indifferent; while all agree that it is our duty to obey God: or laſtly, if they entertain contrary opinions about the characters of men or parties; ſome believing that ſect or party to be honeſt, pious and good, which others take to be ſavage or wicked. On theſe accounts they may have the moſt oppoſite approbations and condemnations, tho' the moral ſenſe of them all were uniform, approving the ſame immediate object, to wit, the ſame tempers and affections.

XIV. WHEN by means of theſe ſenſes, ſome objects muſt appear beautiful, graceful, honourable, or venerable, and others mean and ſhameful: ſhould it happen that in any object there appeared a mixture of theſe oppoſite forms or qualities, there would appear alſo another ſenſe, of the *ridiculous*. And whereas there's a general preſumption of ſome dignity, prudence and wiſdom in the human ſpecies; ſuch conduct of theirs will raiſe laughter, as ſhews, "ſome mean error or miſtake, "which yet is not attended with grievous pain or "deſtruction to the perſon:" for all ſuch events would rather move pity. Laughter is a grateful commotion of the mind; but to be the object of

laughter or mockery is univerſally diſagreeable, and what men from their natural deſire of eſteem careſully avoid.

Hence ariſes the importance of this ſenſe or diſpoſition, in refining the manners of mankind, and correcting their faults. Things too of a quite different nature from any human action may occaſion laughter, by exhibiting at once ſome venerable appearance, along with ſomething mean and deſpicable. From this ſenſe there ariſe agreeable and ſometimes uſeful entertainments, grateful ſeaſoning to converſation, and innocent amuſements amidſt the graver buſineſs of life.

XV. THESE various ſenſes men are indued with conſtitute a great variety of things good or evil; all which may be reduced to theſe three claſſes, the goods of the ſoul, the goods of the body, and the goods of fortune or external ones. The goods of the ſoul are ingenuity and acuteneſs, a tenacious memory, the ſciences and arts, prudence, and all the *voluntary virtues*, or good diſpoſitions of Will. The goods of the body are, perfect organs of ſenſe, ſtrength, ſound health, ſwiftneſs, agility, beauty. External goods are liberty, honours, power, wealth. Now as all objects grateful to any ſenſe excite deſire, and their contraries raiſe averſion; the affections of the will, whether calm or paſſionate, muſt be equally various. We already mentioned the four general claſſes to which they may be reduced, to wit, *deſire*, *averſion*, *joy*, and *ſorrow*: nor have we names ſettled to diſtinguiſh always the calm from the paſſionate, as there are in ſome other languages. But of each of theſe four there are many ſubdiviſions, and very different kinds, according to the very different objects they have in view, and according as they are ſelfiſh or diſintereſted, reſpecting our own fortunes or thoſe of others. And then among thoſe which reſpect the fortunes of others there are great diverſities, according to the different characters of the perſons,

their fortunes, and different attachments, friendſhips or enmities, and their various cauſes.

To purſue all theſe diſtinctions, and examine the ſeveral diviſions made by the learned, would be tedious. We ſhall briefly mention the principal Paſſions, the names of which are alſo often uſed for the calm ſteady affections of the will; [nay the ſame name is often given to deſires and joys, to averſions and ſorrows.]

1. The ſeveral ſpecies of *deſire* of the ſelfiſh kind reſpecting one's own body or fortune, are the natural appetites of food, whether plainer or more exquiſite, luſt, ambition, the deſires of praiſe, of high offices, of wealth. Their contraries are repelled by the *averſions* of *fear* and *anger*, and theſe of various kinds.

The goods of the ſoul we purſue in our deſires of knowledge and of virtue, and in emulation of worthy characters. Their contraries we avoid by the *averſions* of ſhame and modeſty; we are on this ſubject often at a loſs for appropriated names.

2. The diſintereſted *Deſires* reſpecting any ſort of proſperity to others, are benevolence or good-will, parental affections, and thoſe toward kinſmen. The affections of *deſire* toward worthy characters, are favour or good wiſhes, zealous veneration, gratitude. The *averſions* raiſed by their misfortunes are fear, anger, compaſſion, indignation. The proſperity of bad characters moves the *averſions* of envy and indignation.

3. The ſeveral ſpecies of *Joy* reſpecting ones own proſperous fortunes, are delectation, pride, arrogance, oſtentation. And yet a long poſſeſſion of any advantages of the body or fortune often produces ſatiety and diſguſt. From the contrary evils ariſe ſorrow, vexation, deſpair. *Anger* indeed by the Antients is always made a ſpecies of deſire, to wit, that of puniſhing ſuch as we apprehend have been injurious.

From our poſſeſſing the goods of the ſoul, eſpecially virtuous affections, ariſe the internal *joyful* applauſes of conſcience, an honourable pride and glorying. From the contrary evils ariſe ſhame, remorſe, dejection, and brokenneſs of ſpirit, which are ſpecies of *ſorrow*.

4. The virtues of others obſerved raiſe *joyful* love and eſteem, and veneration, and where there's intimacy, the affections of Friendſhip. The vices of others move a ſort of *ſorrowful* hatred, contempt or deteſtation. The proſperity of the virtuous, or of our benefactors, raiſes a *joyful* congratulation; their adverſities raiſe grief, pity, and indignation. The adverſities of the vicious often raiſe joy and triumph, and their proſperity grief and indignation.

Whoever is curious to ſee large catalogues of the ſeveral motions of the Will, may find them in *Ariſtotle*'s *Ethicks*, *Cicero*'s 4th *Tuſcul.* and *Andronicus*. But from what is above mentioned 'tis manifeſt, that there's ſome natural ſenſe of right and wrong, ſomething in the temper and affections we naturally approve for itſelf and count honourable and good; ſince 'tis from ſuch moral ſpecies or forms that many of the moſt natural paſſions ariſe; and oppoſite moral characters upon like external events raiſe the moſt oppoſite affections, without any regard to the private intereſts of the obſerver.

XVI. SOME of theſe affections are ſo rooted in nature, that no body is found without them. The appetites towards the preſervation of the body are excited in every ſtage of life by the uneaſy ſenſations of hunger, and thirſt, and cold. The deſire of offſpring at a certain age, and parental affection, is alſo univerſal; and in conſequence of them, the like affections toward kinſmen. The other affections when the objects are preſented are equally natural, tho' not ſo neceſſary. The appearance of virtue in another raiſes love, eſteem, friendſhip: Honourable deſigns are followed with favour, kind wiſhes, and

zeal: their ſucceſſes move joyful congratulation, and their diſappointment ſorrow and indignation; and the contrary affections attend the proſperity of the vicious, even tho' we apprehend no advantage or danger to ourſelves on either ſide Benefits received with alike natural force raiſe gratitude; and injuries, reſentment and anger; and the ſufferings of the innocent, pity. We alſo juſtly count natural the deſires of knowledge, of the ſeveral virtues, of health, ſtrength, beauty, pleaſure, and of all ſuch things as are grateful to any ſenſe.

XVII. THERE are ſome other parts of our conſtitution not to be omitted, which equally relate to the underſtanding and will. Such as that natural diſpoſition to *aſſociate* or conjoin any ideas, or any affections, however diſparate or unlike, which at once have made ſtrong impreſſions on our mind; ſo that whenſoever any occaſion excites one of them, the others will alſo conſtantly attend it, and that inſtantly, previous to any deſire. To this aſſociation is owing almoſt wholly our power of memory, or recalling of paſt events, and even the faculty of ſpeech. But from ſuch aſſociations, incautiouſly made, we ſometimes are hurt in our tempers. The meaner pleaſures of ſenſe, and the objects of our lower appetites, acquire great ſtrength this way, when we conjoin with them ſome far nobler notions, though not naturally or neceſſarily allied to them, ſo that they cannot eaſily be ſeparated. Hence by ſome notions of elegance, ingenuity, or finer taſte, of prudence, liberality, and beneficence, the luxurious ways of living obtain a much greater reputation, and ſeem of much more importance to happineſs than they really are. Hence 'tis of high conſequence in what manner the young are educated, what perſons they are intimate with, and what ſort of converſation they are inured to; ſince by all theſe, ſtrong aſſociations of ideas are formed, and the tempers often either amended or depraved.

Of a like nature to theſe are *Habits*; for ſuch is the nature both of the ſoul and body, that all our

powers are increaſed and perfected by exerciſe. The long or frequent enjoyment of pleaſures indeed abates the keenneſs of our ſenſe; and in like manner cuſtom abates the feelings of pain. But the want of ſuch gratifications or pleaſures as we have long been enured to is more uneaſy, and our regret the keener. And hence men are more prone to any pleaſures or agreeable courſes of action they are accuſtomed to, and cannot ſo eaſily be reſtrained from them.

We have already ſhewed that whatever is ultimately deſireable muſt be the object of ſome immediate ſenſe. But as men are naturally endued with ſome acuteneſs, forethought, memory, reaſon, and wiſdom, they ſhall alſo naturally deſire whatever appears as the proper *means* of obtaining what is immediately deſireable; ſuch means are riches and power, which may be ſubſervient to all our deſires, whether virtuous or vicious, benevolent or malicious; and hence it is that they are ſo univerſally deſired.

To finiſh this ſtructure of human Nature, indued with ſuch powers of Reaſon, ſuch ſublime perceptive powers, ſuch ſocial bonds of affection, God has alſo ſuperadded the powers of ſpeech and eloquence, by which we are capable of obtaining information of what we are ignorant of, and of communicating to others what we know: by this power we exhort, by this we perſuade, by this we comfort the afflicted, and inſpire courage into the fearful; by this we reſtrain immoderate fooliſh tranſports, by this we repreſs the diſſolute deſires and paſſionate reſentments; this power has conjoined us in the bonds of juſtice, and law, and civil polity; this power has reclaimed mankind from a wild and ſavage life.

Although all theſe ſeveral powers and faculties we have mentioned are ſo common to all mankind, that there are ſcarce any entirely deprived of any one of them, yet there is a wonderful variety of

tempers; ſince in different perſons different powers and diſpoſitions ſo prevail that they determine the whole courſe of their lives. In many the ſenſual appetites prevail; in others there's an high ſenſe of the more humane and elegant pleaſures; in ſome the keen purſuits of knowledge, in others either ambition or anxious avarice: in others the kind affections and compaſſion toward the diſtreſſed, and beneficence, with their conſtant attendants and ſupporters, an high ſenſe of moral excellence and love of virtue: others are more prone to anger, envy, and the ill-natured affections. In the preſent ſtate of mankind which we plainly ſee is depraved and corrupt, ſenſuality and mean ſelfiſh purſuits are the moſt univerſal: and thoſe enjoyments which the higher powers recommend, the generality are but little acquainted with, or are little employed in examining or purſuing them.

This diverſity of Tempers, ſometimes obſervable from the cradle, is ſtrangely increaſed by different cuſtoms, methods of education, inſtruction, habits, and contrary examples; not to ſpeak of the different bodily conſtitutions, which belong to the art of Medicine. The ſame cauſes often concur to corrupt the manners of men, tho' our depravation in our preſent ſtate cannot wholly be aſcribed to them. For ſuch is the preſent condition of mankind, that none ſeem to be born without ſome weakneſſes or diſeaſes of the ſoul, of one kind or other, tho' in different degrees. Every one finds in himſelf the notion of a *truly good man*, to which no man ever comes up in his conduct. Nay the very beſt of mankind muſt acknowledge, that in innumerable inſtances they come ſhort of their duty, and of that ſtandard of moral goodneſs they find within them. And altho' nature has given us all ſome little ſparks as it were to kindle up the ſeveral virtues, and ſown as it were ſome ſeeds of them, yet by our own bad conduct and fooliſh notions we

ſeldom ſuffer them to grow to maturity. But a full and certain account of the original of theſe diſorders, and of the effectual remedies for them, in all the different degrees in which they appear in different perſons, will never be given by any mortal without a divine revelation. And yet whoſoever will ſet himſelf heartily to inquire into the true happineſs of human nature, to diſcover the fallacious appearances of it, and to cultivate the nobler faculties of the ſoul, he will obtain a conſiderable power over the ſeveral turbulent paſſions, and amend or improve in a great degree his whole temper and diſpoſition, whether it be what nature firſt gave him, or what his former conduct and circumſtances have made it.

XVIII. The conſideration of all that variety of ſenſes or taſtes, by which ſuch a variety of objects and actions are naturally recommended to mankind, and of a like multiplicity of natural deſires; and all of them pretty inconſtant and changeable, and often jarring with each other, ſome purſuing our own intereſts or pleaſures of one or other of the various kinds mentioned, and ſome purſuing the good of others; as we have alſo a great many humane kind affections: This complex view, I ſay, muſt at firſt make human nature appear a ſtrange chaos, or a confuſed combination of jarring principles, until we can diſcover by a cloſer attention, ſome natural connexion or order among them, ſome governing principles naturally fitted to regulate all the reſt. To diſcover this is the main buſineſs of Moral Philoſophy, and to ſhew how all theſe parts are to be ranged in order; and we ſhall find that with wonderful wiſdom

God and kind nature has this ſtrife compoſed.

Of this we may have ſome notion from what is above explained about that moral Power, that ſenſe of what is becoming and honourable in our actions.

Nor need we long diſſertations and reaſoning, ſince by inward reflection, and examining the feelings of our hearts, we ſhall be convinced, that we have this moral power or Conſcience diſtinguiſhing between right and wrong, plainly deſtined and fitted to regulate the whole of life; which clearly diſcovers to us that courſe and conduct, which alone we can entirely approve; to wit, that in which all kind affections are cultivated, and at the ſame time an extenſive regard maintained toward the general happineſs of all; ſo that we purſue our own intereſts, or thoſe of our friends, or kinſmen, no further than the more extenſive intereſts will allow; always maintaining ſweetneſs of temper, kindneſs, and tender affections; and improving all our powers of body or mind with a view to ſerve God and mankind. This ſame moral ſenſe alſo filling the ſoul with the moſt joyful ſatisfaction and inward applauſes, and with the moſt cheering hopes, will ſtrengthen it for all good offices, even tho' attended with toil and dangers, and reward our efforts with the moſt glorious recompenſe.

Nay our reaſon too reviewing the evidence exhibited to us in the whole order of nature, will ſhew us that the ſame courſe of life which contributes to the general proſperity, procures alſo to the agent the moſt ſtable and moſt worthy felicity; and generally tends to procure that competency of external things which to a good mind is in its kind the moſt joyful. The ſame reaſon will ſhew us that the world is governed by the wiſeſt and beſt Providence; and hence ſtill greater and more joyful hopes will ariſe. We ſhall thence conclude that all theſe practical truths diſcovered from reflection on our own conſtitution and that of Nature, have the nature and force of divine Laws pointing out what God requires of us, what is pleaſing to him, and by what conduct we may obtain his approbation and favour. Hence the hopes of future happineſs after death, and a ſtrength and firmneſs of ſoul in

all honourable deſigns. Hence the ſoul ſhall be filled with the joys of Piety and Devotion; and every good mind ſhall expect every thing joyful and glorious under the protection of a good Providence, not only for itſelf but for all good men, and for the whole univerſe. And when one is perſuaded of theſe Truths, then both our ſocial and our ſelfiſh affections will harmoniouſly recommend to us one and the ſame courſe of life and conduct.

CHAP. II.

Concerning the SUPREME GOOD.

HAVING in the former Chapter premiſed a pretty full deſcription of human Nature and its ſeveral powers, we proceed to inquire into the Supreme Good or Evil, and wherein the chief Happineſs of mankind conſiſts, with the proper plan of life in order to obtain it.

We ſhall lightly paſs over certain celebrated queſtions about the mutual powers of the *underſtanding* and *will* over each other, which properly belong to Pneumaticks or Metaphyſicks. We only ſuggeſt in paſſing, 1. That what is wholly unknown cannot be the object of deſire, and yet there are certain natural propenſities or inſtincts in each ſpecies toward certain objects or actions, as ſoon as it obtains any notion of them, and averſions to their contraries. Theſe the ſchoolmen call the *firſt ſimple motions of Will*. When theſe are ſo ſtrong as to call off the mind from any other objects it may have been employed about, and ſur-

mount its ſloth, or any diſpoſitions to reſt, it raiſes alſo a deſire of ſearching out the proper means of obtaining the objects deſired, and of diſcovering which of them are moſt eligible: and when this point is ſettled, then, according to the *Stoicks*, we are determined to execute theſe means, or there ariſes the *effectual purpoſe* of action. Many of the *Peripateticks* deny that the Will is certainly determined to follow even the laſt *practical judgments*, tho' it generally does ſo. They alledge that it has an inherent power, notwithſtanding any judgments or deſires about the proper ends or means, of determining itſelf to act or abſtain; nay ſome add, that it can determine itſelf to either of the contraries, to purſue good, or to purſue evil, even under that notion. Let Metaphyſicians determine theſe points. This in general ſeems true, that we cannot properly aſcribe any active power to the *underſtanding*, about our conduct in life. 'Tis its buſineſs only to diſcover *Truth*; whereas *willing*, *ordering*, *commanding*, *purpoſing*, are acts of Will.

The *will* again ſeems to have no other power over the *underſtanding* than this, that a man may as he wills turn his underſtanding to conſider all the evidence on either ſide, and where the higheſt evidence does not occur, he can ſuſpend any peremptory aſſent, and reſolve upon a further hearing of the cauſe. But wherever full, certain evidence appears, he cannot at pleaſure withhold his aſſent, or aſſent to the other ſide. Nay, where on one ſide he ſees ſuperior probabilities, he cannot avoid judging that ſide to be more probable.

II. WE alſo paſs over ſome ſpeculative queſtions about the general notions of Good, and Final Cauſes or Ends, and their diviſions; as they are eaſy and belong to other ſciences. Theſe maxims ſeem evident. 1. The objects of deſire are purſued either ultimately for themſelves, or as means to ſomething further, or on both accounts. 2. Whatever is ultimately deſirable is either recommended by

ſome immediate ſenſe or ſome natural inſtinct or impulſe, prior to all reaſoning. 'Tis the buſineſs of reaſon to find out the *means* of obtaining what we deſire: or if various objects of deſire interfere, to inquire which of them is of moſt importance to happineſs, and what the beſt means of obtaining ſuch objects. 3. Things are recommended to our purſuit, under one or other of theſe three forms or notions, either as *pleaſant*, *profitable*, or *honourable*. Under the notion of pleaſure are ſuch things purſued, in which we have only in view ſome grateful ſenſation to ourſelves; and yet moral writers ſeldom include under this branch of *pleaſant*, either the moral virtues, or the ſciences and ingenious arts. Theſe things are called *profitable* which are deſired as means of ſomewhat further. The *honourable* are the ſeveral virtues either intellectual or moral, which recommend themſelves by their own peculiar dignity, very different from the lower ſorts of pleaſures. 4. The importance or moment of any good toward our felicity depends on its dignity and duration. There's a great difference among the ſeveral ſorts of good in point of dignity. When we compare together the goods correſponding to ſenſes of the ſame order, ſuch as thoſe relating to the external ſenſes, the dignity is juſt the intenſeneſs of the pleaſure in the ſenſation. But the objects of the ſuperior ſenſes have their own peculiar excellence, not to be compared with the lower pleaſures, appearing of itſelf, and raiſing the deſires of ſuch as know them; ſo that we approve and praiſe, and count the perſons happy and wiſe in their conduct, who deſpiſe all bodily pleaſures in compariſon with them. 'Tis thus we plainly judge of the man who prefers the joys of knowledge and of virtue and virtuous actions to all others, and devotes himſelf entirely to them, in oppoſition to even the higheſt ſenſual enjoyments.

To a rational being therefore who is indued with forethought, theſe muſt be the characters of his ſu-

preme Good: "It muſt be ſomething ultimately "deſirable to which moſt other things are refera- "ble; which has the higheſt dignity, which is ſta- "ble or durable, and ſufficient to ſatisfy or make "happy."

III. IN our inquiries after happineſs, which muſt either conſiſt in the full enjoyment of all ſorts of good, or at leaſt in that of the principal ſorts, we muſt obſerve, that 'tis impoſſible for one to enſure to himſelf the full enjoyment of all ſorts of pleaſure, and an immunity from all evil. According to the uncertain fleeting nature of human affairs, all external enjoyments muſt be uncertain. The objects themſelves are periſhable, and our own taſtes and reliſhes are changeable; our health of body on which many enjoyments depend is very unſtable: external objects depend not on our power, but as 'tis commonly ſaid, are the Gifts of Fortune, or more properly depend upon the Divine Providence, which has enſured no man in the conſtant poſſeſſion of them.

Need we alſo mention that there are many inconſiſtencies among the ſeveral enjoyments, ſo that one cannot vigorouſly purſue or enjoy them all: nay ſuch is the dignity of the ſuperior enjoyments, that they ſcorn ſuch conjunction with the lower; their beauty and higheſt joy ariſes from our having deſpiſed and ſacrificed to them the lower pleaſures, and even reſolutely expoſed ourſelves to toils and diſtreſſes on their account.

Since then there's no obtaining a full enjoyment of all ſorts of good, or avoiding of all evil, we muſt carefully enquire which ſorts of good are the moſt important to happineſs, and what evils are the moſt grievous, and moſt everſive of tranquillity and happineſs. We muſt therefore compare together the ſeveral goods which affect the various ſenſes, and that both in reſpect to dignity and duration: and in like manner compare the ſeveral evils, to diſcover which of them are moſt grievous and deſtructive.

IV. We may here tranſiently notice, that tho' we grant to *Hieronymus* of Rhodes, and ſome others of antiquity, that upon the mere removal of all pain there naturally enſues a ſtate in itſelf grateful and pleaſant: and that a ſtab'e ſort of tranquillity and joy accompanies an intire immunity from uneaſy ſenſations, ſo kind is the conſtitution of our nature, provided the mind is not diſturbed by any keen deſires or fears; ſo that their maxim is true, that wherever there's freedom from all evil, there muſt be the poſſeſſion of ſome good: yet 'tis plain that beings endued with ſo many ſenſes, and active appetites and deſires, cannot be made happy by mere indolence. This pleaſure is but of a low kind, nor has it any dignity; much leſs can it have ſuch force upon the ſoul as to be the ſpring of our actions and conduct in life. Happineſs, therefore, muſt depend upon other ſorts of goods ſuited to our perceptive powers. And here,

In the firſt place, 'tis plain that bodily pleaſures have none of that dignity which is the object of praiſe. Were the ſenſations never ſo intenſe, yet they all are plainly mean, and many of them ſhameful: they are tranſient too and fleeting; nor does the remembrance of paſt enjoyments give any ſuch pleaſure, or yield any ſuch matter of joy or glorifying, which could allay any ſorrows or diſtreſſes in life, or ſupport us under them.

Nor can it be juſtly alledged, that the common ſentiments of mankind ſeem to make theſe the higheſt of all, becauſe we ſee the greater part of men much devoted to them alone. This is ſo far from truth, that there are few to be found, who, when the fervor of their paſſions is a little cooled, won't own, that ſuch pleaſures are quite inſufficient to happineſs. The moſt worthleſs characters have ſome imperfect notions of virtues almoſt continually influencing them; ſome friendſhips, ſome kind offices towards ſuch as either nature or acquaintance hath attached to them, and whom they raſhly hap-

pen to eſteem. Nor can any one deem himſelf happy in conſtant inactivity or ſenſual enjoyments: they muſt conjoin with them frequent actions and offices, which according to their notions are virtuous. But, how ſtrong ſoever the lower appetites may be in proportion to the nobler, yet ſtill that diviner faculty, naturally deſtined to govern the reſt, and from whoſe dictates we are chiefly to judge of the intention of God and nature, rather ſcorns and rejects ſenſual enjoyments, as below the dignity of the rational nature, and will not allow them to make a part of the true happineſs.

Need we further inſiſt that ſenſual pleaſures are almoſt continually recommended by ſome borrowed colours of a moral kind, of friendſhip, humanity, beneficence, or an elegant taſte; otherways they would be deſpicable and ſhameful. Nay, our conſcience or moral ſenſe ſeldom appears in oppoſition to them; ſince by the ſtrange deceit of the paſſions, we generally perſuade ourſelves of their innocence. But on the other hand, the virtues charm and make us happy by their own native beauty and dignity: nor are we to imagine that happineſs is found only in mirth, gaiety, laſciviouſneſs, or diverſions, the amuſements of weaker minds. There's an higher happineſs to the grave who are intent on ſerious buſineſs, from their own goodneſs, ſtrength of mind, and ſteadineſs.

There's juſt cauſe too of appealing from the judgment of the voluptuous, who, given up to ſenſuality, ſeldom experience the joys of a virtuous ſort moſt becoming the rational nature, and never feel the pleaſures of entire ſtable integrity and goodneſs. They are corrupt judges, having the nobler ſenſes of the ſoul much ſtupified. But the external ſenſes are never imagined to be any way impaired by the greateſt dignity and ſteadineſs of ſoul in all the moral virtues. The good man knows all the good in ſenſual pleaſures, and deſpiſes it, that he may adhere to virtue: finding, upon full knowledge of

both, that in virtue conſiſts the ſupreme good. Theſe honourable enjoyments are never blended with ſenſual pleaſures, or recommended to us as the means of obtaining them; on the contrary, they are chiefly recommended by the labours, troubles, and dangers incurred;

Midſt loſſes, deaths, deriving force
And ſpirit from the hoſtile ſword. HOR.

Nay, we have in this cauſe frequent teſtimonies from the voluptuous themſelves. How few are ſuch abandoned wretches as not to be much more affected with the beauty of ſome virtues, than with any bodily pleaſures? Who won't ſometimes, in ſerving a friend, or maintaining their own moral characters, or refuting certain calumnies, expoſe themſelves to toils and dangers, and forego pleaſures? How few are devoted to mere ſolitary ſenſuality, without any ſocial friendly affections and joys? The few who are ſo, the world looks upon as monſters, and deteſts them. And then how tranſient and fleeting are theſe pleaſures, ſince they depend entirely upon the continuance of the appetite? When the natural craving is ſated, all pleaſure is gone; and there muſt be long, tedious, and diſagreeable intervals, unleſs they are filled up with more honourable purſuits.

A little reflection too will ſhew us, what is of high importance in this matter, that in a temperate courſe of life, filled up with the moſt virtuous purſuits, till the natural appetites recur, there is generally that enjoyment of the lower pleaſures which is both ſafeſt and moſt delightful; ſince moderation and abſtinence heightens the enjoyment. With ſuch goodneſs is our nature conſtituted by God, ſo gentle is the reign of virtue, that it reſtrains not its ſubjects from that enjoyment of bodily pleaſures, which, upon a right eſtimate, will be found the ſweeteſt: altho' this ſhe demands, that we ſhould ſtill preſerve ſo lively a ſenſe of the ſuperior plea-

ſures, as may be ſufficient to controul the lower appetites, when they make any oppoſition. But on the other hand, under the empire of ſenſuality there's no admittance for the virtues; all the nobler joys from a conſcious goodneſs, a ſenſe of virtue, and deſerving well of others, muſt be baniſhed; and generally along with them even the rational manly pleaſures of the ingenious arts.

V. LET us next conſider that pleaſure which ariſes from the elegance and grandeur of life: this no doubt is of a far ſuperior kind to brutal ſenſuality, and yet is neither very great nor durable. Such things can give ſmall alleviation to any of the important evils of life, ſuch as bodily diſeaſes, or thoſe of the mind, which are often more ſevere, our own anxieties, ſolicitudes, ſorrows. While theſe matters of ornament, elegance or grandeur are new to us, they are pretty agreeable; but being a ſhort while enured to them puts an end to their pleaſure: we are ſoon cloyed; and if the taſte continues, we fall a hunting after ſomething new, with a ſtrange caprice and inconſtancy; expoſing ourſelves to innumerable chagrins and ſolicitudes, to obtain what again we ſhall preſently be cloyed with and nauſeate.

Need we inſiſt further that all theſe things require alſo ſome friendly ſociety: their principal charm is in ſome notions of liberality, kindneſs, good-will, and ſharing of pleaſures with others: by theſe chiefly they are made joyful to us and matter of glorying. And then ſuch things may be enjoyed by the very worſt and moſt wretched of mankind, as well as by the moſt worthy.

Let us ſubjoin to theſe the pleaſures of the ingenious arts, and that moſt truly manly ſort which we enjoy in knowledge and the ſciences: theſe the ſenſe of every one who has any tolerable genius or gentlemanly taſte, muſt indeed prefer far above any bodily pleaſures; and they are alſo far more durable and ſtable. Whenever therefore we have leiſure

from the honourable offices of life, what ſtudy or pains we employ about them is truly laudable, and the remembrance of it will be agreeable. This is the natural food of the rational nature, and a pleaſure ſuited to it; this is the proper exerciſe and improvement of that diviner part: theſe pleaſures are of a purer kind, and more honourable and joyful, and friendly too to the voluntary virtues. And yet we may eaſily ſee that they alone are not ſufficient to happineſs: they are not abſolutely the higheſt; and are plainly in their own nature deſtined for ſomething further, even for theſe honourable offices, by which we may ſerve our friends or our country. And hence it is that all men muſt approve one who would throw aſide even the moſt delightful ſtudies about the moſt important ſubjects, when he were called to ſuccour his friends or his country, or to perform any kind or friendly office.

Let us imagine with ourſelves a perſon poſſeſſed of every ornament and elegance of life, along with all the means of bodily pleaſures, and this by ſome miraculous providence; and that he were employed in the nobleſt contemplations with uninterrupted leiſure, and yet void of all ſocial affection, neither loving any nor beloved, without any opportunities of friendly offices: or imagine him retaining the natural affections toward others, but that all his kinſmen, all the objects of his love are calamitous and miſerable: Is there any man ſo diveſted of humanity as to wiſh for ſuch a lot to himſelf, or think it deſirable? muſt not every one look upon it as miſerable and deteſtable? Imagine further, that the moroſe unkind affections alſo ariſe, envy, hatred, ſuſpicion, fear; paſſions which generally fill up the vacancy of the kind affections in our hearts, even when we live in the greateſt affluence: ſurely this ſtate of life muſt be deemed moſt miſerable, void of all true pleaſure, and more to be dreaded than even a painful death. And yet on the other

hand, friendly ſociety in life, mutual love and confidence, and virtuous offices, can make a laborious toilſome life, even amidſt diſtreſſes, deſirable and glorious.

VI. LET us proceed to another ſource of happineſs or miſery, our ſympathetick or ſocial feelings with others, by which we derive joys or ſorrows from their proſperity or adverſity. And this all muſt allow to be of great importance. For, in the name of all that's ſacred! who would not prefer beyond all compariſon the liberty, virtue and felicity of his children, his kinſmen and friends, his countrymen, not only to ſenſual pleaſures, but to the nobleſt pleaſures of a ſelfiſh ſort in the arts and ſciences? who would not rather forego them all than behold all ſuch as are dear to him in a condition either miſerable or ſhameful? While there's any life or vigour in the natural affections of the ſocial kind, ſcarce any thing can more affect our happineſs or miſery than the fortunes of others. What powerful relief under our own misfortunes ariſes from ſeeing the proſperity of ſuch as are dear to us! and how is all our enjoyment of life deſtroyed and beat to pieces by ſeeing their miſery!

This ſocial ſympathy we naturally approve: to be touched deeply with the misfortunes of others is honourable; nor can we wiſh to be diveſted of this ſenſe even when it occaſions to us ſevere diſtreſſes and ſorrows: and the contrary temper, the hard inſenſible heart, tho' free from ſuch cares and ſorrows, we naturally deteſt, and deem it miſerable, becauſe it is odious and baſe.

The joys or ſorrows of this claſs may alſo be very laſting, according as the proſperity or adverſity of the perſons we love continues. Nay we have deep ſorrow in reflecting upon the diſtreſſes or deaths of friends for a long time after theſe events: this duration of theſe ſenſations adds exceedingly to their importance.

What happineſs we derive from this ſource is plainly independent of us, and is determined by Providence. No man can inſure it to himſelf any more than external pleaſures. Nor is it of conſequence to prevent ſympathetick pain, to think that men are generally the guilty cauſes of their own miſeries. Nay this very thing is chiefly deplorable and moſt pityable, that men are made miſerable by their own faults, placing their hopes of happineſs in ſuch mean periſhing objects. All who deem themſelves miſerable are truly ſo, even altho' a change in their own tempers would, in the ſame external circumſtances, make them happy.

There's plainly no other refuge from theſe evils, no other foundation for tranquillity or ſtable joy to a kind heart, but a conſtant regard to the Deity and his wiſdom and goodneſs governing this world; with a ſtable perſuaſion that all is ordered in the wiſeſt and beſt manner for the univerſal felicity; and that all that variety of evil we behold is yet no more or greater than what is requiſite for the proſperity and perfection of the univerſe, and may at laſt alſo frequently tend to the real good of theſe very perſons whoſe misfortunes we bewail.

VII. THE next ſource of happineſs or miſery naturally connected with the former, is that *conſcience* or *ſenſe* of what is right and honourable, which is alſo of great importance in life. This any one may perceive who can recollect any offices he has done for others with vigour, friendlineſs, an high ſenſe of duty, or fortitude: and obſerves with what joy the remembrance muſt fill his ſoul. What are our ſentiments of others? with what endearment, what ardent good-will do we embrace ſuch as are engaged in ſuch offices? and how happy do we deem them even amidſt their toils and dangers; nay, when they are voluntarily expoſing themſelves to certain death for their friends, their country, or for the propagation of true religion? The very re-

veries of men at leiſure, when they are imagining to themſelves, or thoſe they love, a whole plan of life of the greateſt dignity and happineſs they can conceive, ſufficiently ſhew that they can have no notion of an happy courſe of life without a continued courſe of ſteady virtue, diſplay'd amidſt toils and dangers. Theſe ſentiments appear rooted in our hearts from our childhood. The whole frame of our nature ſhews that we are deſtined for action, and that in virtuous action alone we can find the higheſt happineſs, in compariſon with which all ſenſual pleaſures appear deſpicable.

And then, with what joy, with what tranquillity and confidence muſt a good man be filled, who endeavouring to reſemble the Deity as far as he can, is perſuaded that he has the Deity for his propitious kind Ruler, Father, and munificent Rewarder; who, being aſſured that all events are governed and diſpoſed of by his Providence, willingly embraces whatever befals him, firmly truſting that it is ordered with perfect wiſdom, and ſhall tend to his good: one who knows and loves the Supreme excellence, and is frequently employed in the contemplation and imitation of it.

Add to all this, that theſe joys are the moſt ſtable and durable which ariſe from a conſciouſneſs of our good diſpoſitions, and of having acted according to them. The honourable toils and troubles are ſoon over, and are ſucceeded by joyful and glorious reflections. The taſte is not changeable or inconſtant; the practice of virtue is never cloying; nay, it rather whets anew our appetite for further good offices of the ſame or a nobler kind. To this are joined theſe further pleaſures, when we congratulate with thoſe we have ſerved effectually; when we juſtly expect the approbation and praiſes of mankind; when we have the joyful hopes of obtaining from God and men whatever is requiſite for our ſafety and felicity. Nor need any one fear the want of opportunities for exerciſing his

virtues in good offices, if he is heartily ſet upon them, according to the condition of life allotted him. The indigent or weak may not be capable of important ſervices to others in external things. But ſuch a one, having moſt ardent wiſhes for the proſperity of mankind, and reſolved to profit them at leaſt by his example of piety, and by ſuch mean offices as are in his power, may, with an humble confidence and joy, approve this goodneſs of his heart, theſe honourable affections to God, the moſt equitable judge, and to the wiſeſt of mankind, and expect their favour, approbation, and protection.

VIII. WHAT naturally enſues upon this ſenſe, is that of *honour* and *infamy*, which is a very keen and lively one. Praiſe and glory, when they are founded upon virtue, make no ſmall acceſſion to happineſs; but without this foundation they are of little conſequence. That muſt be an unfair and trifling mind which can be delighted with praiſes it knows not to be due to it. True glory, like a lively tree, ſpreads its roots deep, and diffuſes its branches: but falſe glory, like the bloſſoms, muſt ſoon fall. No man can be aſſured that groundleſs honours can remain with him even for a day. Such is the power of truth, that it frequently prevails beyond all expectation, either in the unmaſking of oſtentatious hypocrites, or in vindicating the injured character, and reſcuing virtue from calumnies. And ſince the true object of praiſe is virtue alone, that natural ſtrong paſſion for praiſe ſhould excite every wiſe man to regulate his whole life according to the rules of virtue, and employ himſelf continually in ſome truly honourable offices.

IX. THAT we may not quite omit another ſource of enjoyment, though of a lower kind, that which conſiſts in mirth and gaiety, amidſt ſports, diverſions, and jeſting; we ſhall only briefly ſuggeſt, that unleſs the nobler powers be much ſtupified, and we caſt aſide all manly thoughts and reflection, indulg-

ing a baſe negligence about the moſt important concerns, we can no other way than by virtue and a careful regard to the duties of life, promiſe to ourſelves either tranquillity or chearfulneſs. For when the ſoul is galled and ulcered either with remorſe, or with the ill-natured envious paſſions oppoſite to virtue, or with fears and ſuſpicions, there can be no undiſturbed enjoyment of any ſatisfaction. In this matter the common ſimilitude holds, "Whatever "is poured into a ſour caſk muſt ſoon grow acid." 'Tis then alone we can be truly eaſy and chearful, fit to reliſh all manly pleaſantries and mirth, when we are poſſeſſed of a courteous, humane, ſweet temper, with a good conſcience, and maintaining a friendly ſocial intercourſe with good men. Whatever, therefore, is valuable in gaiety and mirth, ſhould alſo excite us to cultivate all kinds of virtue, and perſuade us to activity in diſcharge of all the duties of life.

X. As to wealth and power; whatever good is in them, ſhould naturally lead a wiſe man into the ſame virtuous courſe: ſince it is by obtaining the favour and good-will of others, and maintaining credit in ſociety, that wealth and power are eaſieſt obtained and preſerved: nor can the greateſt wealth or power ſecure its poſſeſſor againſt a general hatred or reſentment. But as wealth and power are not deſired for themſelves, but for further purpoſes, from what we have ſhewn to be the nobleſt pleaſures of life, and our higheſt advantage and happineſs, it muſt appear, that they alone reap the true fruits, and have the ſafeſt and ſweeteſt and moſt honourable enjoyment of wealth or power, who employ them in liberality and beneficence.

But ſince one of the firſt and ſtrongeſt principles in all animals is the deſire of ſelf-preſervation, we muſt offer a few thoughts on this head. 'Tis plain this deſire, like moſt others, may be too ſtrong: nor is mere living ſo much the object of it, as an happy life: and 'tis certain that in ſome circum-

ſtances life ceaſes to be deſirable: as for inſtance, when we cannot preſerve it without great baſeneſs, ignominy, and remorſe; or muſt continue it under bodily pain. The moſt friendly heart would wiſh for the death of his friend, when he cannot otherways eſcape theſe evils. Death is a certain event to all, and no man knows how ſoon it may happen. It muſt therefore often be wiſe conduct for one's own intereſt to expoſe his life to the greateſt dangers when any ſacred duty requires it, that he may not, for the preſervation of life, loſe all that makes it worth retaining. We ought, therefore, to fortify our minds againſt the terrors of death: for one who dreads an evil always impendent, and that may ſurprize us every moment, can retain no tranquillity. And this ſtrength of mind is to be obtained by deep meditation from our youth, that after death, if it deſtroys the mind as well as the body, 'tis impoſſible there can be any evil, or any uneaſy ſenſation. But if our ſouls periſh not in death, which we juſtly conclude both from the goodneſs of God and the divine powers of the ſoul itſelf; then all good men may hope for a joyful ſtate, and that this fading mortal life ſhall be ſucceeded by a new life of a nobler kind, which alone deſerves that name.

The whole former reaſonings unite in this concluſion, that happineſs conſiſts in the virtues of the ſoul, and in the continued exerciſe of them in good offices: to the completion of which, however, ſome moderate advantages, with reſpect to the body and fortune, are requiſite; at leaſt that we enjoy health, and ſuch a competence of external things, as may ſatisfy the painful cravings of nature. From the poſſeſſion of virtue alone life is to be counted happy: but to make it compleatly ſo, there muſt be a moderate degree of external proſperity.

XI. THE ſame concluſion is further confirmed by comparing the ſeveral evils contrary to the ſeveral ſorts of good already compared. And here, in the

firſt place, it is plain, that the ſtrength and force of bodily pain is greater in proportion than that of bodily pleaſures; and this wiſely ordered, that we may be the more ſtrongly excited to our own preſervation: and yet they are not to be looked upon as the greateſt of evils. Men are often led into this miſtake by comparing ſome ſmaller kinds of moral turpitude, even when they are excuſed in ſome meaſure or alleviated by the greatneſs of the temptation, with the higheſt bodily tortures. But ſome crimes are ſo deteſtable, and muſt occaſion ſuch ſelf-abhorrence, and torturing remorſe; and ſome ſorrows and diſtreſſes, occaſioned by the miſery of perſons very dear to us, are ſo deep, as to occaſion miſery ſuperior to any bodily torments.

And then as to duration, the pain of the body, as well as its pleaſures, can ſeldom be very durable. Such pain as is laſting muſt generally be of a lighter ſort, or admit of frequent intervals of eaſe. The ſeverer kinds muſt generally ſoon end in death: and the remembrance of paſt pain, when we dread no returns of the like, has nothing uneaſy in it; nay, is ſometimes ſweet, and matter of glorying.

The more elegant pleaſures of the arts, from beauty, harmony, and ingenious imitation, and all theſe things which relate to the ornament or grandeur of life, have no proper pain oppoſite to them. Theſe more ſublime ſenſes are the avenues of pleaſure, and not of pain. Where indeed men have indulged ſtrong deſires of ſuch gratifications, or affect glory and eminence by them, it may be very uneaſy to be diſappointed, and we may regret much the want of them. But an abſolute want of them is not an abſolute neceſſary cauſe of any miſery. Nay, we ſee that the greater part of men are abundantly eaſy without them, and therefore have no ſolicitude to procure them.

But it is of the higheſt uſe to obſerve, that virtue of itſelf has no natural tendency to expoſe us to any

of theſe external loſſes or pains: nay, it rather prevents or removes them. But if it ſhould be our fortune to incur ſuch loſſes or pain, from which ſurely the vicious are no more ſecured than the virtuous; or if ſometimes on account of virtue we ſhould be expoſed to ſuch evils, which is ſometimes the caſe (though men are much more frequently involved by their vices in ſuch evils, and that in a more ſhameful baſe way) virtue can teach us to bear ſuch evils with reſolution, or to conquer them; or will afford us a variety of ſtrong conſolations under them. Juſt reflection will ſhew us that ſuch events are the proper matter of exerciſe for the moſt glorious virtues, the courſe in which they muſt run and train themſelves, acquiring daily new force: that it is by bearing them with patience that our reſignation to God, our ſubmiſſion, and magnanimity muſt be diſplayed, ſtrengthened, and at laſt glorioufly rewarded.

The miſeries of the ſympathetick kind, from the diſtreſſes of others, are often more ſevere; nor can they be allayed by any ſenſual pleaſures, or any external objects. Such diſtreſſes are alſo very laſting: ſince all remembrance or reflection upon any grievous misfortune or infamy of any perſon dear to us, muſt always be matter of great uneaſineſs. There is ſcarce any conſolation under ſuch diſtreſs, except what muſt be derived from reſignation and truſt in the Deity; by which alone it is that good men can ſupport their ſpirits in all events.

But ſtill the moſt grievous of all evils is the moral turpitude of a depraved heart, conſcious of its own baſeneſs This makes a man odious to himſelf, and makes his own temper, what's moſt eſſential and intimate to him, appear baſe and ſhameful, nay, ignominious and deteſtable. This evil too is of the moſt laſting nature; ſince the remembrance of our paſt crimes or impieties muſt ever be grievous and ſhameful. Nor can we ſhake off his uneaſy tormenting feeling, unleſs by an entire

alteration of temper, and reparation of any injuries we have done; nor will this itſelf do it effectually. Its common attendants too are ſolicitudes, fears, anxieties; and, as ſuch perſons have deſerved ill of God and mankind, they muſt live in a perpetual dread that they ſhall be repaid according to their demerits.

Along with theſe inward cauſes of miſery, comes alſo infamy; which, when juſtly deſerved, gives ſevere and laſting torment, excludes all hopes of true friendſhip or favour with others, and of obtaining their faithful aſſiſtances for our advantage.

From all this we ſee that it was with the juſteſt reaſon the old Academy and the Peripateticks placed happineſs in "a conſtant activity, according to the higheſt virtue, in a proſperous courſe of life." This the ſchoolmen call the *ſupreme formal good*. The ſame, therefore, is the ſummary notion of happineſs and of virtue: to wit, "that we ſhould love and reverence the Deity with all our ſoul, and have a ſtedfaſt good-will toward mankind, and careſully improve all our powers of body and mind by which we can promote the common intereſt of all;" which is the life according to nature.

XII. BUT we ought always to keep this in our thoughts, that we entirely depend on God; that all the goods either of mind or body, all our virtues, have been derived from him, and muſt be preſerved or increaſed by his gracious Providence: and ſince every good temper muſt always extend its views abroad, ſtudiouſly purſuing the happineſs of others, which alſo entirely depends on the will of God, and cannot be inſured by human power; there can be no other ſtable foundation of tranquillity and joy than a conſtant truſt in the goodneſs, wiſdom and power of God, by which we commit to him ourſelves, our friends, and the whole univerſe, perſuaded that he will order all things well. The

ſchoolmen therefore juſtly call God the ſupreme object of happineſs, or the *ſupreme objective good*, from the knowledge and love of whom, with the hopes of being favoured by him, our ſupreme happineſs muſt ariſe.

CHAP. III.

Concerning the CHIEF DIVISIONS *of* VIRTUE.

HAVING ſhewn that our chief good conſiſts in virtuous activity, our next inquiry muſt be, What are the ſeveral virtues? and what actions flow from them? and toward what objects?

In explaining our natural conſcience or ſenſe of what is good and honourable, we ſhewed that the chief virtues of the ſoul are kind affections and beneficent purpoſes of action: and that of theſe the calm and ſtedfaſt are more excellent than the paſſionate, and that the moſt extenſive are the moſt excellent. Amongſt the moſt excellent too we placed an ardent love of moral excellence, an earneſt deſire of increaſing it in ourſelves, and an high eſteem and love toward all who are poſſeſſed of it, with the higheſt love toward the ſupreme excellence. Whence appeared our duty of loving God with the higheſt veneration, and the ſacred obligations we are under to cultivate ſuch affections.

In the middle or lower claſſes of virtues we placed theſe narrower affections which either nature or acquaintance have excited: of theſe the more lovely are ſuch as ariſe in a virtuous heart upon obſerving in others the like virtuous diſpoſitions: and hence ſuch friendſhips as virtue has begot and nouriſhed muſt appear very lovely. There is alſo ſomething very engaging in a general courteſy,

and ſweetneſs of deportment toward all we have any intercourſe with,

We reckon alſo among the virtues all theſe habits or diſpoſitions, which tend to improve the nobler powers of the ſoul, or are naturally joined with or ſubſervient to generous affections; and all ſuch too as tend to reſtrain the meaner ſenſual appetites, the ordinary obſtacles to virtue, and gives us a power to control them: all theſe we immediately eſteem for themſelves. For by the wiſe contrivance of our Creator, our natural taſte is ſo formed, that we immediately approve and eſteem all ſuch affections or powers, the more in proportion as they are of greater importance to the general good. And hence it is that we not only approve and love the kind affections of a more contracted kind, which are ſo neceſſary in the ſeveral relations of life, while they are not oppoſite to any more extenſive intereſt; but we alſo immediately approve a *ſincere, ingenuous, candid temper*; we praiſe *abſtinence* or contempt of wealth and pleaſure, and *fortitude:* as all theſe naturally evidence a mind poſſeſſed of an high taſte for moral excellence, confirmed by an indifference about, or contempt of ſenſuality, and external advantages, or diſadvantages. Nay, we immediately reliſh ſuch a ſtate or motion in the body as carries natural indications of virtue; and all the contrary diſpoſitions, whether of mind or body, appear diſagreeable and offenſive.

Need we mention again ſome natural ſenſe, different from the moral one, but not unlike it, by which we reliſh and value ſome powers of the mind and the body quite different from any of the voluntary virtues, To all the powers God has given us there is conjoined ſome ſort of ſenſe or reliſh, recommending that exerciſe of them we call natural, which is alſo the moſt ſubſervient to the general good. Hence we highly approve the purſuits of knowledge and the ingenious arts, a capacity of application, induſtry, and perſeverance. Nay, even

in bodily exercises and recreations, we most approve these which either shew something of ingenuity or strength, or tend to increase them.

II. HAVING given this general rude draught of the Virtues, it is proper to consider their several kinds, that each of them displaying its beauty to us, may more allure us to pursue them. Virtue in the largest acceptation, may denote any power or quality which is subservient to the happiness of any sensitive being. In its stricter acceptation it denotes any habit or disposition which perfects the powers of the soul; and thus virtues are divided into the *intellectual*, which include all improvements of the mind by ingenious arts and sciences; and *moral*, which are chiefly counted virtues, being perfections of the *will* and *affections*; and these are the chief object of Ethicks.

And yet the intellectual virtues are not to be altogether omitted in Morals: not only because they afford a noble branch of happiness, pleasures exceedingly becoming our rational nature; to which whosoever is enured, and has got an high taste for them, is enabled to contemn the meaner enjoyments which lead to vice; whence the sciences have justly been deemed *purifications of the soul*: but because they give a more direct aid to the moral virtues. For from a deeper enquiry into nature and the universe, the perfections of the great Creator are displayed, our dutiful veneration toward him increased, the mind led into a just contempt for the low worldly pursuits of mankind; and that *humility*, or deep consciousness of our own weakness and manifold imperfections, is obtained, which is a chief ornament and perfection in a good character. Nay, without a great deal of knowledge in the lower and ordinary affairs of life, we must be deficient in that practical prudence which is always necessary in our conduct. But these virtues or accomplishments belong principally to other branches of

philoſophy, or arts. This we ſuggeſt only in general, that in the purſuits of knowledge theſe two faults are to be cautiouſly avoided, the one that of raſh precipitate aſſenting; and for this purpoſe we muſt both take time and make vigorous application, and bring along a mind free from prejudices and prepoſſeſſions, or any paſſionate attachments. The other fault is employing too much keenneſs upon ſubjects, perhaps difficult, but of ſmall uſe or neceſſity in life.

As to the moral virtues ſeated in the will; the diviſions given of them by different authors are very different. The followers of Ariſtotle, having this principally in view, that it is by immoderate ungoverned paſſions that we are led into vice, while yet all theſe paſſions have been wiſely implanted in our nature by the Deity for neceſſary purpoſes, they define virtue, "a conſiderate habit of the ſoul preſerving a mediocrity according to right reaſon;" as indeed it is a great part of the office of virtue to keep the ſeveral affections, which are frequently diſorderly, from both the extremes of *exceſs* and *defect*. In this view, to explain the ſeveral virtues they go through the ſeveral natural paſſions, and their ſeveral degrees, when they are either too languid or too vehement; and ſhew that the middle degrees are the ſafeſt, the moſt advantageous, and the moſt graceful: and theſe they count virtuous. Now the ſeveral habits by which this mediocrity is preſerved, according to a celebrated diviſion among the Antients, they reduce to four claſſes, which are called the *Cardinal Virtues*; *Prudence*, *Juſtice*, *Temperance*, and *Fortitude*; from which they derive all the ſeveral branches of virtue.

III. PRUDENCE they deſcribe "a cautious habit of conſideration and forethought, diſcerning "what may be advantageous or hurtful in life;" which muſt be acquired and preſerved by experience and frequent meditation. This habit, no doubt, is neceſſary in all the buſineſs of life. But one would

think prudence were rather to be ranked among the intellectual than the moral virtues: and yet no man can attain to the true ſolid prudence, whoſe heart is not improved by the moral virtues, with an high ſenſe of moral excellence; and who has not deeply imbibed the more generous ſentiments of goodneſs. Others may have a ſort of crafty ſagacity in worldly affairs, which aſſumes to itſelf the title of Prudence and Wiſdom, but yet is very remote from it. The vices oppoſite to this virtue are *raſhneſs*, *inconſiderateneſs*, a *fooliſh ſelf-confidence*, and *craft*.

Fortitude they define to be "that virtue which "ſtrengthens the ſoul againſt all toils or dangers "we may be expoſed to in diſcharge of our duty:" it is this virtue which repreſſes all vain or exceſſive fears, and gives us a ſuperiority to all the external accidents of our mortal ſtate; grounded on a thorough knowledge of their nature, that no external advantages are to be compared in point of happineſs with the poſſeſſion of virtue, and gaining the approbation of our own hearts, and of God, to whom our tempers muſt be perfectly known; and that nothing ought ſo much to be dreaded as vice and the moral deformity of the ſoul: and conſequently, ſince death muſt ſoon befal us in all events, that an early death with virtue and honour is highly preferable to the longeſt ignominious life. On ſuch principles as theſe muſt be founded that true greatneſs and elevation of mind which is not to be diſturbed by external accidents.

This true grandeur of mind is diſcovered in theſe three things; in an high reliſh and love of moral excellence; in that ſuperiority to and contempt of external accidents juſt now mentioned; and in a tranquillity free from paſſion. There is, therefore, no true fortitude in not dreading moral turpitude or juſt infamy: the truly brave and wiſe avoid theſe things above all; as they will alſo decline any dangers to which no virtuous offices call them. Now as our paſſionate motions are of two kinds; one,

that of paſſionate deſires, the other that of averſions, fears, or anger; and Fortitude regulates theſe latter, as Temperance does the former; among the branches of Fortitude are reckoned, beſide Magnanimity, Conſtancy, Hardineſs, and Patience, *Lenity* alſo of temper, and *Clemency*; and, when the publick intereſt requires it, *Rigour* and *Severity*, with ſuch juſt reſentment as is requiſite to repel or reſtrain injuries.

The vices oppoſite to Fortitude, on one hand, are *Puſillanimity* and *Cowardice*, and their common attendant *Cruelty*; on the other hand, furious *Boldneſs* and *Temerity*, which is often attended with *Obſtinacy* and *Ambition*, or too keen deſires of eminence, inconſiſtent with that equality of right which ſhould be maintained in every free ſtate.

Temperance is that virtue which reſtrains and regulates the lower appetites toward ſenſual pleaſures; as it is by them that men are moſt frequently enſnared into all manner of vices, and into a neglect of every thing honourable. In this virtue moſt remarkably appears the grace and beauty of manners, which is quite deſtroyed by ſenſuality.

The ſeveral branches of Temperance are *Moderation of mind*, *Modeſty*, *Chaſtity*, *Frugality*, a *Contentment* with, or Reliſh for plain ſimple fare, and a *Severity* of manners, in oppoſition to all obſcenity and lewdneſs. The oppoſite vices are *Luxury*, *Gluttony*, *Drunkenneſs*, *Impudence*, *Wantonneſs*, *Obſcenity*, effeminate *Softneſs*, and *Delicacy* as to food and other cares about the body.

But *Juſtice* they make the ſovereign virtue to which all the reſt ſhould be ſubſervient: this they define "an habit conſtantly regarding the common "intereſt, and in ſubſerviency to it, giving or performing to each one whatever is due to him upon "any natural claim." Under it they include all the kind diſpoſitions of heart by which a friendly intercourſe is maintained among men, or which

leads us to contribute any thing to the common intereſt. Such as *Liberality*, *Beneficence*, *Friendlineſs*, *Gratitude*, *Magnificence*, *Courteſy*, *Humanity*, *Veracity*, *Fidelity*, *Hoſpitality*, *Love of our Country*, *Dutiful affection* in the ſacred relations of life, and principally *Piety* toward God, who is conceived as the Ruler and Father of that moſt venerable and ſacred political Body, the Rational Creation, of which our ſeveral countries are but ſmall parts. The nature of the three former cardinal virtues may be known from what was ſaid above about the Supreme Good, and the compariſons made of the ſeveral objects of our natural deſires: and the nature of Juſtice will be more fully explained in the ſecond Book, * where we treat of the ſeveral rights of mankind.

Theſe four virtues they maintain to be naturally connected and inſeparable not only in their higheſt degree, which they call the *Heroic*; but in the middle degree, called that of *Temperance*, when the lower appetites are eaſily governed: although they may be ſeparated in the firſt weaker diſpoſition called the degree of *Continence*. And yet from each of them ſome peculiar duties are derived which they dilate upon very agreeably. But ſo far for this ſubject.

IV. THERE ariſes here a queſtion of ſome little difficulty about the original of virtue, whether it ariſes from the very conſtitution of our nature, or from inſtruction and habit, or by ſome divine influence or power. On which ſubject we briefly ſuggeſt, that whatever flows from any natural principles is as much owing to God, and we are as much indebted to him for it, as if it had in an extraordinary manner been effected by his power. Nor ought our gratitude to be leſs for any benefit, on this account that the liberal Donor has diffuſed the like goodneſs amongſt many, or that theſe benefits

* See Book ii. Chap. 2, and 4.

have been beſtowed upon us in a certain regular method, according to ſome fixed laws, in conſequence of a ſtable ſeries of cauſes determined at firſt by the goodneſs and wiſdom of the Author of nature; or becauſe he has uſed other voluntary agents as his miniſters and inſtruments, whom he has inclined or excited to do us ſuch good offices. Any virtues therefore which we find in ourſelves ſhould be the chief matter of thankſgiving and praiſes to God. And yet there's nothing incredible in this that the univerſal Governor of the world ſhould alſo by his power inſpire and excite men to whatever is glorious and honourable: nay 'tis rather improbable that he who had diſplayed ſuch goodneſs in beſtowing external advantages on us, ſhould not alſo exert the ſame goodneſs and power in beſtowing the more noble benefits *. The concurrence of theſe three cauſes to be ſure muſt undoubtedly make men virtuous. We ſometimes ſee an happy natural diſpoſition, with ſomething like a divine impulſe, produce great matters without much aid from inſtruction or diſcipline: but without ſome tolerable natural diſpoſition, at leaſt without a natural taſte or capacity for virtue (which however ſcarce any one wants altogether) inſtruction or cuſtom would be of little or no effect. Of theſe two a good natural diſpoſition ſeems of greater conſequence, as nature is a more ſtable principle. And yet inſtruction and habit wonderfully improve the natural diſpoſition; and 'tis but ſeldom that without their aids we can expect to ſee any thing great and eminent.

We ſhall not dwell further upon that mediocrity inſiſted on ſo much by *Ariſtotle*: for tho' it well deſerves our conſideration, yet 'tis plain that the primary notion of virtue does not conſiſt in it. And however it may hold not only as to our lower appe-

* This cannot appear ſtrange to thoſe who aſcribe to the conſtant operation of God thoſe forces in the material world by which its frame is preſerved. See *Antoninus*, B. i. c. 17. and B. ix. c. 48.

tites, and ſome of the more ſublime ones by which we are purſuing more manly enjoyments of a ſelfiſh kind, but even in the more narrow affections of good-will, that a middle degree, equally removed from both the extremes of exceſs and defect, is the moſt laudable; yet there can be no exceſs in theſe affections in which virtue chiefly conſiſts, to wit, in the love of God, and in that extenſive good-will toward all, or in the love of moral excellence, provided we have juſt notions of it.

V. THERE's another diviſion more obvious and perhaps more natural, according to the ſeveral objects toward whom our virtues are to be exerciſed, into *Piety* toward God, and *Good-will* toward Men: to which a third branch may be added of ſuch virtues as immediately relate to *ourſelves*, by which a man immediately aims at his own perfection. And altho' there be nothing morally lovely in mere ſelf-love, and it muſt be ſome reference to our duty to God, or to that toward men, which muſt make a man's duties toward himſelf appear venerable or amiable; yet this third branch muſt not be omitted, ſince it is by means of a proper ſelf-culture that we muſt be prepared for any honourable ſervices to God or mankind; and with this reference they are exceedingly amiable.

In purſuit of this laſt diviſion, we firſt explain the duties of Piety, both to ſhew their true nature, and their importance toward our happineſs; next we conſider our duties toward our fellows; and laſtly that ſelf-culture which is ſubſervient to Piety and Humanity.

CHAP. IV.

Our Duties toward God.

PIETY conſiſts in theſe two eſſential parts; firſt, in juſt opinions and ſentiments concerning God, and then in affections and worſhip ſuited to them.

The juſt opinions concerning God are taught in natural Theology or Metaphyſicks; to wit, that the Deity is the original independent Being, compleat in all poſſible perfection, of boundleſs power, wiſdom, and goodneſs, the Creator, Contriver, and Governor of this world, and the inexhauſtible ſource of all Good. We take theſe principles as granted in treating of Morals, and inquire what affections of ſoul, what worſhip internal or external is ſuited to them.

The inward ſenſe of the heart muſt ſhew at once, that this pre-eminence and infinite grandeur of the original cauſe of all, ought to be entertained with the higheſt admiration and praiſe and ſubmiſſive veneration of ſoul: and ſince there is no deſire more becoming the rational nature than that of knowledge, and of diſcovering the natures and cauſes of the greateſt ſubjects, no occupation of the mind can be more honourable, or even delightful, than ſtudying to know the divine perfections; nor indeed without aſcending to the knowledge of the ſupreme Excellency, can theſe honourable intellectual powers we are endued with find a proper object fully to exerciſe and ſatisfy them.

II. As to the moral Attributes of God: that original and moſt gracious Power which by its boundleſs Force, Goodneſs, and Wiſdom has formed this Univerſe, granting to each being its proper nature, power, ſenſes, appetites, or reaſon, and even moral excellencies; and with a liberal hand ſupplying each one with all things conducive to ſuch pleaſure

and happineſs as their natures can receive; this power, I ſay, ſhould be acknowledged with the moſt grateful affections, with generous love, and the higheſt praiſes and thankſgiving; and with a joyful hope and confidence, purified from all vanity, pride, or arrogance, ſince we are ſuch dependent creatures, who owe to it all we enjoy.

If we more fully conſider the divine Goodneſs and moral Perfection; that the Deity muſt delight in all virtue and goodneſs; that he muſt approve and love all good men: this will ſuggeſt to all ſuch ſtill more joyful hopes, with an higher and more delightful confidence and truſt, and more ardent love of virtue and of the Deity. Hence will ariſe a ſtable ſecurity and tranquillity of the ſoul, which can commit itſelf and all its concerns to the divine Providence. Hence alſo a conſtant endeavour to imitate the Deity, and cultivate in ourſelves all ſuch affections as make us reſemble him; with a ſteady purpoſe of exerting all our powers in acting well that part which God and nature has aſſigned us, whether in proſperity or adverſity.

Such contemplations of the venerable and adorable Excellency and gratuitous Goodneſs of God, whom every good man regards as the witneſs and approver of his actions, will lead us to an ultimate reſting in virtue: that higheſt purity of it, by which we look upon conformity to the divine Will, the diſcharging the duty aſſigned us by him, and performing our part well, as the chief good, the chief fruit of virtue. Nor without this knowledge of the Deity, and theſe affections, can a good benevolent heart find any ſure ground of hope and ſecurity, either as to itſelf or the deareſt objects of its affection, or as to the whole ſtate of the univerſe. Nor can the virtuous mind, which extends its affectionate concerns to all mankind, or the love of moral excellence itſelf, ever be ſatisfied and at reſt, unleſs it be aſſured that there is ſome excellent Being complete in every perfection, in the knowledge and

love of which, with a proſpect of being beloved by it, it can fully acquieſce, and commit itſelf and the deareſt objects of its cares, and the whole of mankind to his gracious providence with full ſecurity.

And altho' there's none of human race who are not involved in manifold weakneſſes and diſorders of ſoul, none who upon reflection won't find themſelves intangled in many errors and miſapprehenſions about matters of the greateſt importance to the true happineſs of life; and in the guilt of manifold crimes committed againſt God and our fellow-creatures; on account of which they may juſtly dread the divine juſtice, and apprehend ſome impendent puniſhments: yet ſuch is the divine goodneſs and clemency; with ſuch long-ſuffering and mercy has he continued for many ages to exerciſe his gracious providence about weak corrupted mortals, that ſuch as ſincerely love him, and deſire, as far as human weakneſs can go, to ſerve him with duty and gratitude, need not entirely loſe hopes of his favour. Nay they have ſome probable ground to expect, that God will be found propitious and placable to ſuch as repent of their ſins, and are exerting their utmoſt endeavours in the purſuits of virtue; and that his infinite wiſdom and goodneſs will find out ſome method of exerciſing his mercy toward a guilty world, ſo as not to impair the authority of his laws and the ſanctity of his moral adminiſtration, tho' human wiſdom ſhould never particularly diſcover it. And further, what is ſufficient for our purpoſe in the preſent queſtion can admit of no debate; that the perfection of virtue, muſt conſtitute our ſupreme felicity; and that the ardent deſires, and ſincere efforts to attain it, cannot fail of a moſt important effect, either in obtaining compleat felicity, or at leaſt ſome lower degree of it, or a great alleviation of miſery.

The ſublimer powers of the ſoul of their own nature lead us to the Deity: as they are derived from

him, they powerfully draw us back to him again. Our high powers of reaſon, our benevolent affections of the more extenſive kinds, and our natural ſenſe and love of moral excellence, have all this natural tendency. By theſe bonds all rational beings are as it were connected with and affixed to the Deity, if they have any care to cultivate theſe higher powers. Nor is the ſpring of this divine love the mere proſpect of our own felicity to be found in him: for from our natural ſenſe and approbation of moral excellence, whereſoever it is diſcovered, there muſt ariſe a diſintereſted love and veneration, detached from all conſiderations of our own intereſts.

And further, ſince all the more lively affections of the ſoul naturally diſplay themſelves in ſome natural expreſſions, and by this exerciſe are further ſtrengthened; the good man muſt naturally incline to employ himſelf frequently and at ſtated times in ſome acts of devotion, contemplating and adoring the divine excellencies; giving thanks for his goodneſs; humbly imploring the pardon of his tranſgreſſions; expreſſing his ſubmiſſion, reſignation, and truſt in God's Providence; and imploring his aid in the acquiſition of virtue, and in reforming his temper, that he may be furniſhed for every good work. For the frequent meditation upon the ſupreme and perfect model of all goodneſs muſt powerfully kindle an ardent deſire of the ſame in every ingenuous heart.

But here we muſt avoid any imaginations that our piety or worſhip can be of any advantage to the Deity, or that he requires it of us, for any intereſt of his own. 'Tis rather our own intereſt that is promoted by it, and 'tis for our ſakes that God enjoins it; that we may obtain the trueſt felicity, and excellence, and the pureſt joys. By entertaining theſe ſentiments concerning the worſhip of God, we ſhall be ſecured from both the extremes, of *impiety* on one hand, which conſiſts in a neglect and con-

tempt of all religious worſhip; and *ſuperſtition* on the other, which is an abject dread of a cruel or capricious Dæmon men form to themſelves, which they conceive appaiſable by ſavage or fantaſtick rites.

III. HITHERTO we have treated of internal worſhip. But our nature ſcarcely reliſhes any thing in ſolitude; all our affections naturally diſcover themſelves before others, and infect them as with a contagion. This ſhews that God is not only to be worſhipped in ſecret, but in publick; which alſo tends to increaſe our own devotion, and to raiſe like ſentiments in others, and makes them thus partakers of this ſublime enjoyment. This ſocial worſhip is not only the natural reſult of inward piety, but is alſo recommended by the many advantages redounding from it; as it has a great influence in promoting a general piety: and from a general ſenſe of religion prevailing in a ſociety, all its members are powerfully excited to a faithful diſcharge of every duty of life, and reſtrained from all injury or wickedneſs. And hence it is that mankind have always been perſuaded, that religion was of the higheſt conſequence to engage men to all ſocial duties, and to preſerve ſociety in peace and ſafety.

The external worſhip muſt be the natural expreſſions of the internal devotion of the ſoul; and muſt therefore conſiſt in celebrating the praiſes of God, and diſplaying his perfections to others; in thankſgivings, and expreſſions of our truſt in him; in acknowledging his power, his univerſal Providence and goodneſs, by prayers for what we need; in confeſſing our ſins, and imploring his mercy; and finally, in committing ourſelves entirely to his conduct, government, and correction, with an abſolute reſignation.

Where ſuch devout ſentiments are cheriſhed, and affections ſuitable to them, there muſt be kindled an ardent deſire of inquiring into all indications of the Divine will. And whatever diſcoveries we find

made of it, whether in the very order of nature, or by any ſupernatural means, which ſome of the wiſeſt of the Heathens ſeem to have expected, the good man will embrace them with joy.

CHAP. V.

OUR DUTIES TOWARD MANKIND.

THE duties to be performed toward others are in like manner pointed out to us by our natural ſenſe of right and wrong; and we have many natural affections exciting us to them. There are many ſorts of kind affections in the ſeveral relations of life, which are plainly implanted by nature. Thus nature has implanted in the two ſexes a ſtrong mutual affection, which has a wonderful power, and has in view not ſo much the low gratification common to us with brutes, as a friendly ſociety for life, founded upon that endearment which ariſes from a mutual good opinion of each others moral characters, of which even beauty of form gives ſome evidence. There is alſo implanted a ſtrong deſire of offſpring, and a very tender peculiar affection toward them. In conſequence of this, there are alſo natural affections among brothers, ſiſters, couſins, and remoter kindred, and even ſuch as are allied by marriages.

But there are ſtill more ſubtile ſocial bonds. 1. Good men, who know each other, have a natural affection, not unlike that among kinſmen. 2. Men are ſtill further bound by an intercourſe of mutual offices. 3. But benevolent affections ſtill ſpread further, among acquaintance and neighbours, where there is any meaſure even of the commoneſt virtues. 4. Nay, they diffuſe themſelves even to all our

Countrymen, members of the ſame polity, when multitudes are once united in a political body for their common intereſt. 5. And in men of reflection there is a more extenſive good-will embracing all mankind, or all intelligent natures. 6. Along with theſe, there is a tender compaſſion toward any that are in diſtreſs, with a deſire of ſuccouring them; and a natural congratulation with the proſperous, unleſs there has intervened ſome cauſe of averſion or enmity.

Theſe kind affections are immediately approved for themſelves: every one feels a complacence in them, and applauds himſelf in indulging them, as ſome way ſuited to his nature: but the contrary affections which are occaſionally incident to men, ſuch as anger, hatred, envy, revenge, and malice, are of themſelves uneaſy; nor can any one applaud himſelf in remembering them, or approve like paſſions in others: they are often matter of ſhame and remorſe; and even when they ſeem juſtifiable and neceſſary, yet they contain nothing joyful, nothing glorious.

II. WE have abundantly ſhewn how much theſe kind affections, with the ſuitable virtuous offices, contribute to our happineſs. All men, who have not quite diveſted themſelves of humanity, and taken up the temper of ſavage beaſts, muſt feel that without mutual love, good-will, and kind offices, we can enjoy no happineſs: and that ſolitude, even in the greateſt affluence of external things, muſt be miſerable. We alſo ſhewed that the calm, ſteady affections were more honourable than the turbulent. But we muſt ſtill remember, that mere kind affection without action, or ſlothful wiſhes, will never make us happy. Our chief joy conſiſts in the exerciſe of our more honourable powers; and when kind affections are tolerably lively, they muſt be the ſpring of vigorous efforts to do good.

This, therefore, is the ſum of all ſocial virtues, that with an extenſive affection toward all, we exert

our powers vigorouſly for the common intereſt, and at the ſame time cheriſh all the tender affections in the ſeveral narrower relation, which contribute toward the proſperity of individuals, as far as the common intereſt will allow it.

III. BUT as there are very few who have either abilities or opportunities of doing any thing which can directly and immediately affect the intereſts of all; and yet every one almoſt can contribute ſomething toward the advantage of his kinſmen, his friends, or his neighbours; and by ſo doing, plainly promotes the general good; it is plainly our duty to employ ourſelves in theſe leſs extenſive offices, while they obſtruct no intereſt more extenſive, and we have no opportunities of more important ſervices. In doing ſo we follow nature, and God its author, who by theſe ſtrong bonds has made ſome of mankind much dearer to us than others, and recommended them more peculiarly to our care.

We muſt not, therefore, from any airy views of more heroic extenſive offices, check or weaken the tender natural affections, which are great ſources of pleaſure in life, and of the greateſt neceſſity. Nay, it is our duty rather to cheriſh and increaſe them, in proportion to their importance to the common intereſt. But at the ſame time we ſhould chiefly fortify the moſt extenſive affections, the love of moral excellence, and the ſteady purpoſe of conformity to the divine will. While theſe nobler affections have the control of all the reſt, the ſtrengthening the tender affections in the ſeveral narrower attachments of life will rather tend to compleat the beauty of a moral character, and the harmony of life. The intereſt too of each individual ſhould lead him to this cultivation of all kind affections; ſince, as we ſhall preſently ſhew, ſo are we formed by nature, that no man in ſolitude, without the aids of others, and an intercourſe of mutual offices, can preſerve himſelf in ſafety, or even

in life, not to ſpeak of any pleaſure or happineſs. Now it is plain, that it is only by kind offices and beneficence that we can procure the good will of others, or engage their zeal to promote our intereſts: whereas by contrary diſpoſitions, by a ſordid ſelfiſhneſs, and much more by violence and injuries, we incur the hatred of others; wrath and diſcord muſt ariſe, and we muſt live in perpetual dread of the evils which the reſentments of others may occaſion to us. Nay, further, from ſuch conduct there naturally ariſe in our own minds all the ſullen, uneaſy paſſions of ſuſpicion, jealouſy, and too well-grounded fears: ſince not only the perſons immediately injured, but all others who have any regard to the common intereſt, are rouſed by a juſt indignation to repel and revenge any injuries attempted againſt their neighbours.

Nor ſhould we omit ſome other wonderful contrivances in nature to preſerve a ſocial life among men and avert injuries. What a manifeſt acceſſion of beauty is made to the countenance from friendly mirth, and cheerfulneſs, and an affectionate ſympathy and congratulation with others! How much grace ariſes from a reſolute conſcious virtue, and the inward applauſes of a good heart! What charms in the countenance, what gentle flames ſparkle in the eyes of a friend, or of one who is full of gratitude for any kindneſs received! On the other hand, when an injury is received or apprehended, and there is hope of avenging and repelling it, in what ſtorms of countenance does reſentment diſcover itſelf, and what wrathful flames flaſh from the eyes! But when there's no hopes of repelling the injuries intended, with what powerful eloquence has nature inſtructed even the dumb animals, as well as ma kind, under any oppreſſive ſorrow or pain, or any great terror! How moving is that mournful wailing voice, that dejected countenance, weeping and downcaſt eyes, ſighs, tears, groans! How powerfully do they move compaſſion in all,

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that they may either give ſuccour in diſtreſs, or deſiſt from the intended injuries?

IV. IN this place we muſt not paſs by the virtue of *Friendſhip*, which is ſo lovely and ſo uſeful in life. To alledge that this ardent affection, of ſuch admirable force, ariſes merely from a ſenſe of our own weakneſs and indigence, that ſo what one cannot obtain by his own power, he may by the aid of others; is aſcribing to it a mean and deſpicable original, and a very unſtable foundation: ſince at this rate any change of intereſt, ſo that we apprehended trouble or inconvenience by our friendlineſs, muſt at once deſtroy all affection or good-will: nay, indeed, there could be no real love, but a mere hypocritical profeſſion of it, from ſuch views of intereſt.

The true ſpring of friendſhip, therefore, muſt be that natural approbation and love of moral excellence already mentioned. For whenſoever virtue appears in the manners of thoſe with whom we are acquainted, there muſt ariſe immediately, without views of intereſt, an high eſteem and love toward them. For the Good, as a ſort of kindred ſouls, naturally love and deſire the ſociety of each other. This love, when it is ſtrengthened by ſeeing each others friendly zeal, and by an intercourſe of mutual ſervices, becomes at laſt as ſtrong as any ties of blood; ſo that we have the ſame ultimate concern about our friends that we have about ourſelves.

But as vicious men are naturally inconſtant and variable, with ſuch oppoſite paſſions as hinder them from either pleaſing themſelves long, or being agreeable to others, ſtable friendſhip is only to be found among the Good; ſince it muſt both be produced and preſerved by virtue. And hence flows the grand rule of friendſhip, that we neither ought to deſire our friend's concurrence in any thing vicious, nor concur in it at his requeſt, leaſt we undermine its only foundation. Friendſhip, therefore,

is "the affectionate union of minds reſembling "each other in virtuous manners." Which whoſoever enjoys, will find it the moſt agreeable companion in the road to virtue and happineſs. What can be ſweeter, what more uſeful than to have a wiſe worthy friend with whom we may converſe as freely as with our own ſoul? what enjoyment could we have of proſperity without the ſociety of one who as much rejoices in it as we do ourſelves? and for adverſity, it is hard to bear it without the ſociety of ſuch as perhaps ſuffer more by ſympathy than we do. In both fortunes we need exceedingly the wiſe counſel of friends: friendſhip which ever way we turn us will be a preſent aid; no ſtation excludes it; 'tis never unſeaſonable or troubleſome. 'Tis the chief ornament of proſperity, and exceedingly alleviates our adverſities by bearing a ſhare in them.

V. WE may further obſerve in relation to the kind affections, that tho' the moſt extenſive good-will toward all can never be too great, nor can our love of God and virtue admit of any exceſs; yet all the more contracted affections ariſing either from the ties of blood or acquaintance, however lovely of themſelves, may ſometimes be exceſſive, and beyond that proportion which a good man would approve. Love is often divided into that of *benevolence* or good-will, and that of *complacence* or eſteem, by which we are pleaſed with the tempers of others and deſire their ſociety. In the former branch there's leſs danger of exceeding the juſt bounds, provided we retain a juſt ſubmiſſion to, and truſt in the divine Providence, and preſerve the more extenſive affections in their proper ſuperiority, ſo as not to ſacrifice the intereſt of our country, or of the larger ſocieties, or of perſons of ſuperiour worth, to that of our friends, or favourites. But the love of complacence which comes nearer to friendſhip, ſtands on more ſlippery ground. We ought to be very cautious that this affection be not

employed about unworthy objects; or allure us to any thing vitious; nor ſo engroſs the whole man, that if theſe beloved perſons be removed from us, or be involved in any calamities, our ſouls ſhould ſink entirely, and become unfit for all offices of piety and humanity. The beſt preventive of theſe evils, is not a reſtraining and checking all the tender affections of a narrower kind; but rather the cultivating the higheſt love and veneration toward the Deity, placing our hope and confidence in his Providence; and enlarging our views and concerns with more equitable minds toward the reſt of mankind, that we may alſo diſcern what real excellencies are among them, perhaps equalling or ſurpaſſing thoſe we had with ſuch fond admiration beheld in our peculiar favourites.

CHAP. VI.

Concerning our DUTIES *toward* OURSELVES, *and the* IMPROVEMENT *of the* MIND.

AS powerful motives of private intereſt naturally excite us to our ſeveral Duties toward ourſelves; to give them ſomething venerable and laudable, they muſt be ultimately referred either to the ſervice of God, or ſome advantages to be procured to others. With this reference they become highly virtuous and honourable.

The culture of our minds principally conſiſts in forming juſt opinions about our duty; and in procuring a large ſtore of valuable knowledge about the moſt important ſubjects: as indeed all branches of knowledge have ſome uſe, and contribute in ſome meaſure to happineſs, either by the immediate pleaſure, or by diſcovering more fully to us the di-

vine perfections, or enabling us better to know and diſcharge our Duty; ſince the affecti ns of the will naturally follow the judgments formed by the underſtanding. All therefore who have abilities and proper opportunities, ought to apply themſelves to improve their minds with an extenſive knowledge of nature in the ſciences; and 'tis the duty of all to acquire by diligent meditation and obſervation that common prudence which ſhould conſtantly govern our lives. We ought therefore to make juſt eſtimates of all things which naturally raiſe our deſires, conſider thoroughly their importance to happineſs, and find out wherein conſiſts our ſupreme good; the diſcovery of which muſt alſo diſcover the true plan of life. We ſhould therefore deeply impreſs this on our minds, that our chief good is placed in devout affections toward God, and good-will and beneficence toward mankind.

The divine nature therefore and its boundleſs excellencies ſhould be matter of our moſt careful inquiry; eſpecially thoſe attributes which excite our pious veneration, love, and truſt in him. And we are to extirpate all imaginations or ſuſpicions, of any purpoſes in God which are inconſiſtent with the perfection of wiſdom, goodneſs, and love to his creatures.

We ought alſo carefully to ſtudy our own nature and conſtitution; what ſort of beings God requires we ſhould be; what character * either more general, or more peculiar to each one, God requires he ſhould ſupport and act up to in life: that thus we may follow God and nature as the ſure guide to happineſs.

We ought therefore to enter deeply into human nature; obſerving both in ourſelves and others the true principles of action, the true tempers and deſigns:

* See a full explication of theſe characters, the *general* including all integrity and probity of manners, and the *particular*, ſuited to each one's genius, explained in *Cicero de Offic.* B. i. 30, 31, 32, &c.

leaſt we raſhly form worſe notions of our fellows than juſt reaſon would ſuggeſt. By a thorough view of theſe things, we ſhould often prevent or ſuppreſs many of the harſher and ill-natured paſſions, anger, hatred, and envy; and cheriſh humanity, compaſſion, lenity, forgiveneſs and clemency.

II. THIS ſhould alſo continually be in our thoughts, that all things fall out according to the divine counſel, either directly ordering them, or at leaſt, permitting them with the moſt perfect purity, for ſome excellent purpoſes: and that conſequently what appears to us harſh, injurious, or ignominious, may be deſigned to afford occaſion for exerciſing and ſtrengthening the moſt divine virtues of the Good; and in them conſiſts their chief felicity.

The ſoul ſhould be inured to a generous contempt of other things; and this we may acquire by looking thoroughly into them: by obſerving how mean, forbid, fading, and tranſitory are all bodily pleaſures, all the objects that afford them, and our very bodies themſelves! by obſerving how ſmall theſe joys are and how little neceſſary, which ariſe from the external elegance and grandeur of life; and how uncertain they are; what cares they coſt in acquiring and preſerving; and how ſoon they cloy and give diſguſt! as to ſpeculative knowledge; how uncertain and imperfect are many ſciences, leading the embareſſed mind into new obſcurities and difficulties and anxious darkneſs; and diſcovering nothing more clearly than the blindneſs and darkneſs, or the ſmall penetration of our underſtanding. Again how poor an affair is glory and applauſe! which is ordinarily conferred by the ignorant, who cannot judge of real excellence; our enjoyment of which is confined within the ſhort ſpace of this life; which can be diffuſed through but a ſmall part of this earth; and which muſt ſoon be ſwallowed up in eternal oblivion along with all the remembrance either of thoſe who applaud or of the perſons applauded. This thought too of the ſhortneſs of life, will equal-

ly enable the ſoul to bear or deſpiſe adverſity; taking this alſo along, that the ſoul who bears it well, will obtain new and enlarged ſtrength; and like a lively fire, which turns every thing caſt upon it into its own nature, and breaks forth ſuperiour with ſtronger heat, ſo may the good man make adverſe events matter of new honour and of nobler virtues. To ſum up all briefly, all things related to this mortal ſtate are fleeting, unſtable, corruptible; which muſt ſpeedily periſh, and be preſently ſwallowed up in that boundleſs ocean of eternity. For what can be called laſting in human life? Days, months, and years are continually paſſing away; all muſt die, nor is any ſure that death ſhall not ſurpriſe him this very day: and when that laſt hour overtakes him, all that is paſt is loſt for ever; nor can there remain to him any enjoyment, except of what he has acted virtuouſly; which may yield ſome joyful hope of an happy immortality. This hope alone can be the foundation of true fortitude; this proſpect alone can fully ſatisfy the mind as to the juſtice and benignity of the divine adminiſtration.

But as in other arts, the mere knowledge of the precepts is of little conſequence, nor can any thing laudable be obtained without practice and exerciſe; ſo in moral philoſophy, which is the art of living well, the importance of the matter requires habit and continual exerciſe. Let our Reaſon therefore, and the other divine parts in our conſtitution, aſſume to themſelves their juſt right of commanding the inferiour faculties, and enure them to a conſtant ſubjection. And this in our preſent degenerate ſtate muſt require almoſt continual attention and internal diſcipline; to the ſucceſs of which it will contribute much that we be frequently employed in the offices of Piety and Devotion toward God, in adoration of his perfections, prayers, confeſſion of ſin, and pious deſires, and vows of obedience.

III. To apprehend more fully the nature of virtue and vice, and to adorn the ſoul with every mo-

ral excellency, it may be of uſe to run over the ſeveral ſpecies of virtue, with their characteriſticks, and eſtabliſhed names; and obſerve the ſeveral oppoſite vices, whether in the exceſs or defect of ſome natural deſire. The explication of the ſeveral Paſſions belongs to another branch of Philoſophy. To count them all over, and mark their ſeveral degrees whether laudable or cenſurable, with their ſeveral ſigns or characters, would require a very long diſcourſe, with great variety of matter: but what's of moſt importance to lead us to virtue, is the forming juſt eſtimates of all human affairs, all the objects of the natural deſires; and by frequent meditation deeply infixing in our hearts juſt impreſſions of their values, and habituating the ſuperiour parts of the ſoul to a conſtant command over the inferior.

This however muſt be remembered concerning our natural deſires and paſſions, that none of them can be pronounced abſolutely evil in kind: none of them which may not ſometimes be of great uſe in life, either to the perſon in whom they reſide, or to others of mankind: in promoting either their advantage, pleaſure, or even their virtue. Superior orders of intelligence who have the ſuperior powers more vigorous, may perhaps ſtand in no need of ſuch violent motions or inſtigations; but to mankind they ſeem often neceſſary. And there is a moderate degree of each of them which is often advantageous, and often laudable. Such affections as do not come up to this moderate degree are not ſufficient for the purpoſes either of the individual or thoſe of ſociety; and ſuch as are too luxuriant and vehement, whether in purſuit of good or repelling of evil, and paſs over the proper bounds become uneaſy and diſhonourable to the perſon in whom they are, and are hurtful or pernicious to ſociety. The moderate degrees of ſeveral paſſions we juſtly deem not only innocent, but exceedingly ſubſervient to virtue, as its guards or miniſters; and

as the ſprings of many honourable actions, and as real virtues. By means of theſe better paſſions whether in purſuit of good or warding off of evil, we enjoy a more lively ſenſe of life, the force of the ſoul is enlarged, and its activity invigorated: whence *Plato* calls theſe paſſions the *wings* or *chariot-horſes* of the ſoul.

Nature has given us the cleareſt indications of what ſhe requires in this matter. For while theſe paſſions are kept moderate under juſt government, and directed by reaſon, the whole deportment is graceful and lovely. But when we are hurried away by any furious unbridled paſſion, we are utterly incapable of exerciſing our reaſon, or finding out what is wiſe and becoming us; we quite miſs the very aim of the paſſion it ſelf, and our whole deportment is diſagreeable and deformed. Obſerve the very countenances of perſons enraged, or of ſuch as are tranſported with any ardent enflamed deſire, or diſtracted with terror, or fluttering with joy. Their whole air, the whole ſtate and motion of the body becomes deformed and unnatural.

We therefore give the honourable titles of *virtues* to theſe moderate paſſions, equally confined from the two extremes; and call the extremes *vices*. But we have not appropriated names for the moderate and juſt degrees of ſeveral paſſions; and hence ſome have raſhly imagined, that ſome of our natural paſſions are wholly and abſolutely evil. And yet it is plain that there are alſo certain moderate degrees of theſe paſſions both innocent and neceſſary.

To illuſtrate all this by examples. A moderate deſire of *ſelf-preſervation* is both neceſſary and eaſy. Where this is wanting, men ſhew a deſperate audacious diſpoſition without any caution. This temper is generally reſtleſs, turbulent, and deſtructive both to the perſon himſelf and to the ſociety he lives in. Where this care of ſelf-preſervation is exceſſive, it appears in Timidity and Cowardice;

diſpoſitions quite uſeleſs to the public, and tormenting to the perſon, expoſing him to all injuries and affronts.

A moderate reliſh for *ſenſual pleaſures* is uſeful, nay neceſſary. An entire inſenſibility would deprive one of a great deal of innocent pleaſure; but ſeldom meet we with any thing wrong on this ſide. Where the taſte is too high, which we call luxury or intemperance, it generally excludes all the more manly enjoyments, neither conſulting reputation nor honour; nor even health or fortune, or the preſervation of life. This turn of mind too muſt frequently expoſe a man to continual chagrin and uneaſineſs.

About our *eſtates* or *worldly goods* two virtues are employed, *frugality*, which conſiſts in a wiſe management of them for honourable purpoſes, and *liberality*, which excites us to acts of kindneſs to others. The former is abſolutely neceſſary to the exerciſe of the latter: both are pleaſant, advantageous, and honourable: the former more peculiarly ſubſervient to our advantage, and the latter to our honour. The exceſs of frugality and defect of liberality is *avarice*, which is among the moſt deformed and moſt uneaſy vices, purſuing ſtores quite unneceſſary, and which it never intends to uſe; ſtores that muſt be obtained with much toil and uneaſineſs, and need rather more to preſerve them. The defect of frugality and exceſs of liberality is *prodigality*, deſtructive to our fortunes, little ſubſervient to the pleaſure or ſafety of life, or even to fame, which it ſeems chiefly to have in view.

The higheſt pitch of liberality is called *magnificence*, where great expences are wiſely employed for ſome honourable purpoſes. The defect of this is ſeen in an affectation or ſhew of magnificence with an unwilling narrow heart. The exceſs is ſometimes ſeen in the inelegant boundleſs profuſion of perſons who have no juſt notion of decency and elegance.

The higheſt pitch of fortitude is in like manner called *magnanimity*; or an elevation and firmneſs of ſoul, which no circumſtances of fortune can move, aiming ſolely at moral excellence in all its conduct. The extreme in exceſs often appears in a deſperate audacious ambition, ſtopping at no dangers. Such a temper muſt be dangerous and uneaſy to the poſſeſſor, and inconſiſtent with his ſafety, as well as that of others; as alſo deſtructive of the liberty and dignity of all around. The other extreme is puſillanimity or cowardice, rendering a man uſeleſs and miſerable.

The like holds as to the *deſire of power* and promotion in the world: a moderate degree is uſeful and ſits eaſy on a good man: when it grows exceſſive 'tis both uneaſy and reſtleſs, and very vitious, and dangerous to itſelf and all around. Where it is too faint and weak even when juſt occaſions offer, men abandon the proper ſtation or opportunities of virtue and honour.

So alſo a moderate *deſire of fame* is manifeſtly of great uſe, if we have yet higher deſires of virtue. The exceſs of this deſire is reſtleſs and uneaſy, and often defiles and debaſes the true beauty of virtuous actions. Where men want this deſire, or have very languid, they want a very potent incitement to all virtuous offices.

Nor can all *anger* or *reſentment* be condemned, altho' there's little lovely in any degree of it. An entire inſenſibility of all injuries, of which there are but few inſtances, would be a very inconvenient diſpoſition; expoſing a man to the contumelies and petulance of others; nor well conſiſtent with his own character, or the ſafety of ſuch as he is bound to protect. Exceſſive anger on the other hand is a moſt tormenting paſſion, and often deſtructive to the perſon in whom it is found; nor is there any paſſion more dangerous to ſociety.

There's a certain juſt *indignation* becoming a good man, when the worthleſs are promoted to power,

or dignity. One void of ſuch ſentiments would be too little ſolicitous about the intereſts either of his friends or his country. But where this paſſion is exceſſive, or riſes without juſt cauſe (which we call *envy*, the common ſpring of inveterate malice) it is the moſt deſtructive poiſon to the ſoul, tormenting to the breaſt where it reſides, and extremely vitious, leading into the moſt horrid crimes.

This is to be obſerved of all the unkind paſſions which partake of anger, that they ſhould be indulged no further than is plainly neceſſary for our own preſervation or that of our friends and country. If we could without theſe paſſions enſure their ſafety, there would be nothing deſireable or laudable in them: nay on the other hand, nothing is more lovely than lenity, mercy, placability and clemency.

Among the virtues of ſocial converſation, the firſt and chief is *veracity* and candour, of which we ſhall treat more fully † in another place. The oppoſite vices are all as it were defects: lyes, deceit, fraud, crafty hypocriſy and diſſimulation.

In the ſame claſs are ſome other virtues tending to give pleaſure to and oblige all we converſe with; ſuch as *courteſy*, *good manners*, *complaiſance*, *ſweetneſs*, *pleaſantry*, *wit*: all which are laudable and graceful, and promote friendlineſs and good-will in ſociety. There are oppoſite vices on both hands: on the one, a *ſervile fawning* and flattery, and ſcurrility; having no other view than inſinuating by any ſort of pleaſure into the favour of thoſe it makes court to, and ſtooping into the moſt ungentlemanly or obſcene jeſts: on the other, a troubleſome, unmannerly ruſticity and roughneſs, ſhewing no reſpect or deference to company, but pleaſing itſelf with a ſhew of liberty and boldneſs. 'Tis needleſs to dwell upon the inconveniencies ariſing from theſe vices, as they are always mean and

† Book ii, c. 10.

indecent, and often lead to the greateſt miſchiefs. The true preſervative againſt both extremes is firſt to take care to attain a truly virtuous temper; and then, to maintain both a real good-will and a reſpect for thoſe with whom we live in ſociety.

As to *modeſty* and *baſhfulneſs*, 'tis worth our notice that this paſſion plainly ariſes from a lively ſenſe and ſolicitude about what is decent and honourable, and hence gives in our youth hopeful prognoſticks of a fine genius, well formed by nature for every thing virtuous. But where it is exceſſive in maturer years it often retards or withholds men from acting an honourable part: where this ſenſe is very weak or wholly a wanting, men want a powerful guardian to every virtue.

A more copious explication of all this ſubject may be found in *Ariſtotle* and his followers: we may however ſuggeſt before we quit it, that ſince ſuch fatal dangers threaten virtue as it were on both hands, we ſhould certainly apply the greateſt care and attention and ſelf-diſcipline, in governing our ſeveral paſſions, in maintaining a lively and vigorous ſenſe of moral excellence, and cultivating our rational powers, and the nobler and more extenſive calm affections, whether toward our own true intereſts or thoſe of mankind.

IV. THERE's alſo ſome care to be taken of our bodies. Strength and health is to be acquired or preſerved chiefly by temperance and exerciſe; that ſo our bodies may be enabled to obey the commands of the ſoul, in enduring all toils we may incur in diſcharge of our duty.

And ſince men can do little ſervice to ſociety who have not in their younger years been trained to ſome uſeful art or occupation; every one ſhould timeouſly chooſe ſome one, ſuited to his genius, lawful in its nature, and of uſe to mankind. Nor ought ſuch as are born to eſtates, who therefore need not for their own ſupport any lucrative profeſſion, think themſelves exempted from any ſuch obligation. For

it ſeems more peculiarly incumbent on them, as Providence exempts them from other cares, to contribute to the publick intereſt, by acquiring a compleat knowledge of the rights of mankind, of laws, and civil polity; or at leaſt ſuch acquaintance with all the common buſineſs of mankind, that they may be able either by ſuperior wiſdom, or by their intereſt and influence, to ſerve their country or their neighbours; and not be uſeleſs loads of the earth, ſerving only to conſume its products.

As to the ſeveral profeſſions or occupations, we deem them reputable on theſe two accounts, as they either require a finer genius and greater wiſdom, or as they are of greater uſe in ſociety. On both accounts the occupation of teaching others the grand principles of piety and virtue, or even the more ingenious arts, is reputed honourable; ſo are alſo the profeſſions of law, medicine, and war, and ſome others of the more elegant arts. The more extenſive merchandiſe, and even ſome mechanick arts, are juſtly reputable both on account of their great utility, and the conſiderable abilities of mind requiſite in them. Agriculture has been the chief delight of the fineſt ſpirits, as no manner of life is more innocent, none affording ſweeter amuſements, none more becoming a rational creature, or a perſon of genteel taſte in life.

In the choice of our occupation or profeſſion for life, our chief regard ſhould be to our natural genius. But as our ſucceſs in any occupation depends in the firſt place upon our genius, and next to it upon favourable circumſtances of fortune, regard is to be had to both, but chiefly to our natural genius: for nature is a much ſurer and ſteadier principle.

CHAP. VII.

Some PRACTICAL CONSIDERATIONS *to excite and preſerve the* STUDY *of* VIRTUE.

WE need not now ſpend many words in ſhewing the neceſſity of purſuing virtue. For if we are ſufficiently perſuaded that in it conſiſts our chief felicity, and that all other things are uncertain, weak, fading, and periſhing, nor ſufficiently adapted to the dignity of the rational nature, we muſt deem it neceſſary to enter upon that courſe of life which our conſcience or inmoſt ſenſe, as well as right reaſon recommends, as moſt ſuited to our nature, and which leads to the peculiar happineſs of rational beings: by which means alſo we exerciſe and improve theſe powers which are ſupreme and moſt God-like in our conſtitution, and diſcharge the office impoſed upon us by God and nature.

With what other view has God given us ſouls ſo well fitted for the knowledge and practice of ſo many virtues? To what purpoſe ſo many noble powers, ſuch furniture of ſoul for moſt excellent arts and offices; the powers of reaſon and ſpeech, the powers of invention, the deſires of knowledge, an almoſt boundleſs retention and memory of things paſt, a provident ſagacity about futurity reſembling divination, a ſenſe of what is honourable and ſhameful, as the controller of our lower appetites; ſo many kind affections conſulting the good of others, a conſcience or ſenſe diſtinguiſhing the right from the wrong, the honourable part from the vicious and baſe, along with a ſtrength and grandeur of mind for enduring dangerous toils? To what purpoſe that penetration into nature which reaches even to the heavens, diſcovers the Deity preſiding in the univerſe, diſcerns his infinite perfections, and raiſes us to the hopes of immortality after the diſſolution of the body?

Do we ſpeak only about Philoſophers? What nation or clan is there where there has not always prevailed an univerſal and firm perſuaſion, that there is a Deity, that he enjoins certain duties upon mankind, appoints them a certain moral character they muſt maintain; and that their future ſtate after death ſhall be happy or miſerable according to their conduct in this world. Theſe, therefore, are the dictates of nature, ſentiments adapted to our frame, and ſupported by obvious reaſons, which continue coeval with mankind; whereas the credit of ill-founded fictions by length of time has always decayed, and at length vaniſhed away.

Metaphyſicians ſuggeſt many other arguments for the immortality of the ſoul: we only ſuggeſt here, that as the ingenious and artificial ſtructure of the univerſe affords the ſtrongeſt arguments for the exiſtence of artificial intelligence, the Creator and Ruler of this material frame; ſo arguments exactly parallel to them, from the ſtructure of our ſouls, ſhew that God has alſo a regard to the moral qualities, the virtues and vices of rational creatures; and that he exerciſes a juſt moral government over them, under which happineſs muſt be ſecured at laſt to the virtuous, and miſery allotted to the vicious. And ſince we ſee that this does not hold univerſally in the preſent ſtate of this world, we may reaſonably expect another diſplay or unfolding of the divine adminiſtration in a future ſtate, in every reſpect worthy of God. This too is confirmed by the very nature of the ſoul itſelf. For that wonderful life and activity of our minds, that extenſive remembrance, that ſagacious foreſight, thoſe noble powers and virtues, thoſe ingenious arts and ſciences and inventions, make it incredible that ſubſtances containing ſuch excellencies can periſh along with theſe deſpicable bodies. Now ſuch proſpects of immortality muſt ſuggeſt the moſt potent motives to all virtue, and the ſtrongeſt diſſuaſives from vice.

II. AND that we may with greater reſolution endeavour to cultivate all virtue, let us have always at hand theſe thoughts: (1.) That where there's an hearty inclination to what is honourable and good, we ſeldom want ſtrength in execution, and have ground to hope for the divine aſſiſtance. We even ſee, in the ordinary courſe of things, that by vigilance, activity, and wiſe deliberation, all matters generally ſucceed proſperouſly: men daily increaſe in ability; their ſuperior powers acquire new ſtrength and command over the lower appetites; and what at firſt appeared hard and difficult, by cuſtom is made eaſy and even delightful. The toil and trouble of any honourable offices will ſoon be paſt and gone; but the remembrance of them will remain perpetual matter of joy.

(2.) But leaſt the keen deſires of the external advantages and the alluring pleaſures of this life ſhould abate our virtuous purſuits, we ſhould frequently conſider, with the deepeſt attention, what ſtable and ſolid joys and hopes accompany virtue: we ſhould conſider alſo the nature of all worldly enjoyments, and obtain that juſt contempt of them we often mentioned; and ever keep in view the ſhorneſs of this life, and that death muſt ſoon overtake us all.

(3) And yet ſince there's a certain meaſure of external pleaſures and enjoyments natural and neceſſary, we muſt have ſome regard to them; provided we ſtill remember that there are others much more important. That we may not therefore ſeem obliged as it were to declare war againſt all the conveniencies or pleaſures of this life, let us run over the ſeveral virtues, and ſee how much each of them generally contributes to our preſent proſperity and pleaſure.

Prudence which reſtrains the inconſiderate fooliſh impulſes of the paſſions, muſt be alike neceſſary in every courſe of life whatſoever, that we may effectually purſue any end we propoſe, and not blinded

by luſt run headlong into the objects of our ſtrongeſt averſions.

The ſeveral branches of *Juſtice* are of the greateſt conſequence to maintain peace, to avoid offending and provoking others, to obtain ſafety, favour, reputation, credit, wealth, extenſive influence and friends, which are the ſureſt defences againſt all dangers in life. Theſe virtues in their own nature preſerve the ſoul eaſy and calm, and yield a joyful hope that we ſhall always obtain ſuch things as are naturally neceſſary and deſirable. On the other hand, where deſigns of violence and injuſtice poſſeſs the heart, as they are turbulent and uneaſy in their own nature, ſo they devour the breaſt with perpetual ſuſpicions, ſolicitudes, and fears. Need we ſpeak of the higheſt branch of juſtice, Piety towards God? this ſecures to us the favour of the ſupreme Governor of the world, the ſovereign Arbiter of our fortunes, who will always provide for the virtuous, if not the things at preſent moſt pleaſurable, yet ſuch as are truly fitteſt for them, and moſt advantageous and pleaſant at laſt. And from piety will ariſe the hope of immortality, which can always ſupport the ſoul in every circumſtance of fortune.

The ſeveral parts of *Temperance*, as they faithfully cheriſh all other virtues, ſo they tend to preſerve and improve our health, ſtrength, and even the beauty and grace of our perſons; as the tranquillity and inward eaſe of the ſoul ſhews itſelf in the countenance. And frugality, a ſparing, ſimple way of living, diligence, and induſtry, are plainly ſubſervient to wealth and affluence, which luxury and intemperance tend to deſtroy; as they alſo impair our health, ſtrength, and beauty, and expoſe us to infamy and contempt; ſtupifying the nobler parts of the ſoul, and making all the lower appetites outrageous and intractable.

Fortitude and all its parts are a ſafeguard to ourſelves and our friends; whereas by cowardice we not only quit our ſtation of honour and virtue, but

often involve ourſelves in ſuch dangers as we might eaſily have eſcaped by fortitude and preſence of mind. The perſon void of this virtue muſt be in the power of others to make him what they pleaſe, by the threats of evil; even to involve him in the moſt impious and baſeſt vices, which is a ſtate of miſerable ſervitude. If any good man is threatened with great dangers, or expoſed to them even on account of his virtues; as on ſuch occaſions he is entering on the moſt difficult combat, encountering with our moſt capital adverſary, pain; 'tis his buſineſs to rouſe up all the forces of fortitude and patience and reſignation, to recollect the ſacred laws of theſe virtues, which prohibit any effeminate weakneſs, prohibit our ſinking or loſing ſpirit, or crouching under this load. Let him think with himſelf, now he's engaged in the moſt honourable combat, more glorious than the Olympicks; God preſides the witneſs, judge, and rewarder; 'tis cowardly and fooliſh when the prize is ſo glorious, to ſpare a life that muſt ſoon periſh however, and perhaps in a more tormenting manner, by the force of ſome diſeaſe; a life too that does not extinguiſh the ſoul, but ſhall return to us again. 'Tis by ſuch repreſentations made to ourſelves of the honourable forms of virtue, fortitude, magnanimity, duty to God, and patient reſignation, that ſuch pains are abated, and the terrors of death in ſome meaſure taken away.

III. IT was formerly obſerved that 'tis from God we have derived all our virtues. The Philoſophers therefore, as well as Divines, teach us to have recourſe frequently to God by ardent prayers, that, while we are exerting ourſelves vigorouſly, he would alſo adorn us with theſe virtues, and ſupply us with new ſtrength. They thought that no man ever attained true grandeur of mind without ſome inſpiration from God. Need we add, that the very contemplation of the divine perfections, with that deep veneration which they excite, thankſgivings,

praiſes, confeſſions of our ſins, and prayers, not only increaſe our devotion and piety, but ſtrengthen all goodneſs of temper and integrity. We ought therefore have recourſe to the Deity in all difficulties, truſting in his aid, with firm purpoſes of acting that part which is moſt honourable; and recal to our thoughts what virtues this emergence gives opportunity to exerciſe, what furniture or armour has God and nature given us for encountering with ſuch dangers? how joyful ſhall the remembrance be of our conquering ſuch temptations, and diſcharging our duty well? and how ſhameful to be conquered by the allurements of ſome trifling pleaſure, or the terrors of a little pain, and thus debaſe ourſelves by a vicious and ignominious behaviour.

'Tis not our preſent purpoſe to unfold at length all the precepts and motives to virtue. They may be found in the Greek and Roman Philoſophers and modern authors: in peruſing whom it may be proper to collect and keep ready for our uſe all the more lively and affecting ſentiments which occur: and let us form and ſettle in our minds a lively notion of the grandeur and excellence of the ſeveral virtues, ſo that we may not queſtion but that ſuch as are poſſeſſed of them muſt be the truly wiſe and compleatly happy characters. * "Such a man muſt be "ſatisfied with himſelf, neither pining and fret-"ting under troubles, nor broken with any ter-"rors, nor tormented with any impatient ardent "deſires, nor diſſolved in trifling pleaſures and "joys: to him no accidents of this mortal ſtate "appear ſo intolerable as to ſink his ſpirits, nor ſo "joyful as to give him high tranſports. And what "is there in the purſuits of this world, and in this "ſhort tranſitory life, that can appear of great con-"ſequence to a truly wiſe man, whoſe ſoul is ſo "conſtantly upon the watch, that nothing happens "to him unforeſeen or ſurprizing, nothing unex-"pected, nothing new?"

* Cicero's Tuſcul Queſtions, Book iv.

IV. Now as 'tis the grand view of the good man, that according to the intention of nature he ſhould always be employed in contributing ſomething to the general intereſt and happineſs, which plainly requires that large numbers of mankind ſhould be joined in an amicable ſociety; he ought alſo carefully to enquire into all the rules or dictates of right reaſon, by which every part of life is to be regulated, and by obſerving which he may on his part preſerve this ſocial union among mankind: and theſe precepts or concluſions of right reaſon collected together, make what we call the *Law of Nature*; which is the next branch of Moral Philoſophy, of great uſe in the conduct of life.

A SHORT INTRODUCTION TO Moral Philoſophy.

BOOK II.

ELEMENTS OF THE LAW OF NATURE.

CHAP. I.

Of the LAW *of* NATURE.

THAT we may ſhew how all the ſeveral parts of life may be brought into a conformity to nature, and the better diſcern the ſeveral Rights and Duties of Mankind, we ſhall premiſe the more general Doctrine in Morals, explaining ſome pretty complex notions and terms conſtantly occurring; and this is the ſubject of this and the two following chapters.

In the preceding book we ſhewed, how from the very ſtructure of our nature we derived our firſt notions of right and wrong, virtuous and vicious, in our affections and actions: and that it was then *right* and *juſt* that any Perſon ſhould act, poſſeſs, or demand from others, in a certain manner, "when "his doing ſo tended either directly to the com-"mon intereſt of all, or to the intereſt of ſome "part or ſome individual, without occaſioning any "detriment to others." And hence we ſay in ſuch caſes that a man *has a right* thus to act, poſſeſs

or demand: and whoever would obſtruct or hinder him thus to act or poſſeſs, or would not comply with ſuch demand, is ſaid to do an *injury* or *wrong*.

But reſuming this matter a little higher; 'tis plain that this ſtructure of our nature exhibits clear evidences of the will of God and nature about our conduct, requiring certain actions and prohibiting others. The notion of a *law* to which our actions may be compared, is, no doubt, *artificial*, formed upon obſervation: and yet it has in all ages been ſo obvious and familiar to men that it may alſo be called natural. For the notion of a *juſt power*, or *right of governing* others, is obviouſly intimated, from that power nature has inveſted the Parent with, over his children, ſo manifeſtly tending to their good. And this too is known to all by conſtant experience, that the bulk of mankind don't by any nice reaſonings or obſervation of their own diſcover what is advantageous or hurtful in life; nay that the greater part of the practical ſagacity and wiſdom of the generality depends upon the diſcoveries and inſtructions of a few, who have had greater penetration and ſagacity: and ſince 'tis commonly known, and even the men of leſs ſagacity acknowledge it, that there are greater diverſities of genius, and that ſome few have ſuperior abilities to the common herd: that moral principle implanted in all muſt alſo recommend it as advantageous to all; that large ſocieties of men united for their common intereſt, ſhould commit the adminiſtration of their common concerns to a council of a few of the wiſer ſort, and compel any who may thereafter be refractory to ſubmit to their orders, who have thus obtained a juſt right of governing. Hence the notion of *juſt power*, or of a *right of governing*, is among the moſt common and familiar with mankind, when from the very plan and model of power conſtituted, there's tolerable precaution taken

that the Rulers ſhall have either no inducement to abuſe it to the detriment of the whole body, or no hopes of doing ſo with impunity. Hence the notion of *law* too is obvious to all, to wit, "The will of "thoſe veſted with juſt power of governing, de- "clared to their ſubjects, requiring certain actions "and forbidding others with denunciations of re- "wards or puniſhments."

II. Now ſince 'tis generally agreed among men, that the Deity is indued with the higheſt goodneſs, as well as with wiſdom and power, it muſt obviouſly follow that an univerſal compliance with the will of God muſt tend both to the general good, and to that of each individual; to which compliance alſo we are moſt ſacredly bound in gratitude, as we were created by him, and are conſtantly deriving good from his munificent hand: it muſt alſo in like manner follow, that all diſobedience to the will of God muſt be oppoſite to the common felicity, and ſhew a baſe ungrateful mind. Now theſe conſiderations plainly ſhew that it is perfectly juſt and right in the Deity to aſſume to himſelf the government of his rational creatures, and that his *right* is founded upon his own *moral excellencies*.

But ſince no man can give ſufficient evidence to the ſatisfaction of all, that he is poſſeſſed even of ſuperior wiſdom, and much leſs of his ſtable inflexible goodneſs; ſince ambitious diſſimulation would always make the greateſt ſhew of goodneſs, if this were a ſure ſtep to aſcend to power; nor can men ſearch into each others hearts to detect ſuch hypocriſy: and ſince no power generally ſuſpected and dreaded can make a people, who are diffident of their moſt important intereſts, eaſy or happy; no man can juſtly aſſume to himſelf power over others upon any perſuaſion of his own ſuperior wiſdom or goodneſs, unleſs the body of the people are alſo perſuaded of it, or conſent to be ſubjected to ſuch power, upon ſome reaſonable ſecurity given them, that the

power intruſted ſhall not be abuſed to their deſtruction.

III. AND further, ſince it was God our Creator who implanted this ſenſe of right and wrong in our ſouls, and gave us theſe powers of reaſon, which obſerving our own conſtitution, and that of perſons and other things around us, diſcovers what conduct tends either to the common proſperity of all, or that of individuals, and what has a contrary tendency; and ſhews alſo that all ſorts of kind offices generally tend to the happineſs of the perſon who diſcharges them, and the contrary offices to his detriment: all theſe precepts or practical dictates of *right reaſon* are plainly ſo many *laws* *, enacted, ratified by penalties, and promulgated by God in the very conſtitution of nature. [As words or writing are not eſſential to the nature of a law, but only the moſt convenient way of notifying it.]

In every law there are two parts, the *precept* and the *ſanction*. The precept ſhews what is required or forbidden; and the ſanctions contain the rewards or puniſhments abiding the ſubjects, as they obſerve or violate the precept. In Civil Laws, beſide the peculiar rewards or *premiums* propoſed in ſome of them, there is this general reward underſtood in them all, that by obedience we obtain the defence and protection of the ſtate, with the other common advantages of a civilized life, and the rights of citizens. The penalties of human laws are generally expreſſed. The ſanctions of the law of nature are known and promulgated in like manner with the preceptive part. The *rewards* are all thoſe internal joys and comfortable hopes which naturally attend a virtuous courſe; and all theſe external advantages, whether immediately ariſing from good actions, or generally obtained by the good will and approbation of others, or of the Deity, whether in

* On this ſubject ſee Cumberland's *Prolegomena*, or introduction, and Ch. 1. Concerning the law of nature.

this life or in a future ſtate. The *penalties* are all thoſe evils internal or external, which naturally enſue upon vice; ſuch as remorſe, ſolicitude, and diſtreſſing fears and dangers: in fine, all theſe evils which right reaſon ſhews, may probably be expected to enſue through the juſt reſentment of the Deity or of our fellow-creatures.

IV. THE divine laws according to the different manners of promulgation are either *natural* or *poſitive*. *Natural* laws are diſcovered by our reaſon obſerving the natures of things. *Poſitive* laws are revealed only by words or writing. Laws may again be divided according to the matter of them into the *neceſſary* and *not-neceſſary*. Every ſort of law indeed ſhould have in view ſome real benefit to the ſtate: but ſome laws point out the ſole and neceſſary means of obtaining ſome great benefit, or of averting ſome great evil; ſo that contrary or even different laws could not anſwer the neceſſary purpoſes of ſociety: while others only fix upon the moſt convenient means, where many others might have tolerably anſwered the end; or, where there's a variety of means equally appoſite, yet fix upon one ſet of them, when 'tis neceſſary that multitudes ſhould agree in uſing the ſame means. Such is the caſe in appointing *ſet times* and *places*, and other *circumſtances*, where matters of common concern are to be tranſacted jointly by many. Theſe latter ſort of laws are alſo called *poſitive* as to their matter, and the former *natural*, in the ſame reſpect.

V. LAWS generally reſpect alike a whole people, or at leaſt all of a certain claſs or order; this holds as to all natural laws. But ſometimes civil laws are made in ſingular caſes, reſpecting only one perſon; theſe the Romans call *privilegia*; which were either out of ſingular favour or ſingular reſentment. If ſuch *privileges* are granted for extraordinary merits, and have no pernicious tendency toward the body, they are very juſtifiable. Caſes

may happen too, tho' ſeldom, in which it may be juſt to bring to puniſhment ſome very artful dangerous criminal by a ſpecial law, which is not to be made a precedent in the ordinary procedure of juſtice.

Equity is ſometimes underſtood as ſomething diſtinct from *ſtrict law*, being "the reaſonable wiſe "correction of any imperfection in the words of the "law, by their not being ſufficiently extended, or "too extenſive in regard to the true reaſon or de-"ſign of the law." This equity has place only as to laws promulgated in words; for the law of nature determines all points, not by words, but by right reaſon, and what is humane and good.

VI. THE doctrine of *diſpenſations* was brought in by the Canon-law. A diſpenſation is "the ex-"empting one out of ſpecial favour from the obli-"gation of a law." Diſpenſations are either from the preceptive part, or from the ſanction, in remitting the penalty. Where the penalty is remitted or altered in ſuch a manner as conſiſts with the common ſafety, and does not weaken the authority and influence of the law, it is not to be blamed. Such a diſpenſing power for ſingular important reaſons is frequently veſted in the ſupreme Rulers or Magiſtrates of States. But for previous exemptions from the preceptive part of any wiſe law they can never be reaſonable.

But firſt, we don't count it a diſpenſation when any one, uſing his own right and the ordinary power veſted in him by law, frees another from ſome legal obligation, or impoſes a new one. As when a creditor remits a debt, or the ſupreme Governor commiſſions ſubjects to act in his name what he has a right to execute, tho' without ſuch commiſſion theſe ſubjects had acted illegally in doing ſo.

Again, ſometimes by laws, whether divine or human, an external impunity may be juſtly and wiſely granted to ſuch conduct as is very vicious and culpable; if either through the ſtupidity or de-

pravity of the people ſuch vices could not be reſtrained without much greater inconvenience than what ariſes from the permiſſion of them. But this comes not up to the notion of diſpenſation.

But in the third place, no grant or permiſſion of any governor, human or divine, can make evil malevolent affections become morally good or innocent, or benevolent ones become evil: nor can the moral nature of actions flowing from them be any more altered by mere command or permiſſion. The *diſpenſations* therefore, the *Canoniſts* intend, are then only juſtifiable, when the laws themſelves are bad or imprudent, of which the Canon-law contains a great multitude.

VII. The *Law of nature* as it denotes a large collection of precepts, is commonly divided into the *primary* and *ſecondary*; the former they ſuppoſe immutable, the latter mutable. This diviſion is of no uſe as ſome explain it, * that the primary conſiſts of ſelf-evident propoſitions, and the ſecondary of ſuch as require reaſoning. Many of thoſe they count primary require reaſoning; nor are juſt concluſions more mutable than the ſelf-evident premiſes. The only uſeful ſenſe of this diſtinction is, when ſuch precepts as are abſolutely neceſſary to any tolerable ſocial ſtate are called the *primary*; and ſuch as are not of neceſſity, but tend to ſome conſiderable improvement or ornament of life, are called *ſecondary*. But theſe latter in the ſight of God and our own conſciences are not mutable, nor can be tranſgreſſed without a crime, more than the primary; altho' there may be many political conſtitutions where the violation of theſe ſecondary precepts paſſes with impunity.

From the doctrine of the former book it muſt appear, that all our duties, as they are conceived to

* See *Vinnius's* comment on the Inſtit. lib. i. 2. 11. The ſame diſtinction is variouſly explained by other authors; but ſcarce any of them ſo explain it as to make it of importance.

be enjoined by ſome divine precept, are included in theſe two general laws, the one that "God is to "be worſhipped with all love and veneration:" and in conſequence of it, "that he is to be obeyed in "all things."

The ſecond is, that "we ought to promote as we "have opportunity the common good of all, and "that of particular ſocieties or perſons, while it no "way obſtructs the common good, or that of "greater ſocieties."

CHAP. II.

Of the NATURE *of* RIGHTS, *and their ſeveral* DIVISIONS.

SINCE it is manifeſtly neceſſary to the common intereſt of all that large numbers of men ſhould be joined together in amicable ſocieties, and as this is the ſum of all our duties towards men that we promote their happineſs as we have opportunity; it muſt follow, that all actions by which any one procures to himſelf or his friends any advantage, while he obſtructs no advantage of others, muſt be lawful: ſince he who profits one part without hurting any other plainly profits the whole. Now ſince there are many enjoyments and advantages naturally deſired by all, which one may procure to himſelf, his family, or friends, without hurting others, and which 'tis plainly the intereſt of ſociety that each ſhould be allowed to procure, without any obſtruction from others, (ſince otherways no friendly, peaceable ſociety could be maintained:) we therefore deem that each man has a *right* to procure and obtain for himſelf or his friends ſuch advantages

and enjoyments; which Right is plainly eſtabliſhed and ſecured to him by the ſecond general precept abovementioned, enjoining and confirming whatever tends to the general good of all, or to the good of any part without detriment to the reſt. In all ſuch caſes therefore men are ſaid to act according to their *right*. And then, as the ſeveral offices due to others are recommended to us by the ſenſe of our own hearts; ſo others in a ſocial life have a claim to them, and both deſire, and naturally or juſtly expect them from us, as ſome way due to them: in conſequence of this it muſt appear, that the ſeveral rules of duty, or ſpecial laws of nature, cannot be delivered in a more eaſy manner than by conſidering all the ſeveral *claims* or *rights* competent to individuals, to ſocieties, or to mankind in general as a great body to ſociety; all which are the matter of ſome ſpecial laws.

The ſeveral rights of mankind are therefore firſt made known by the natural feelings of their hearts, and their natural deſires, purſuing ſuch things as tend to the good of each individual or thoſe dependent on him: and recommending to all certain virtuous offices. But all ſuch inclinations or deſires are to be regulated by right reaſon, with a view to the general good of all.

Thus we have the notion of *rights* as moral qualities, or *faculties*, granted by the law of nature to certain perſons. We have already ſufficiently explained how theſe notions of our *rights* ariſe from that *moral ſenſe* of right and wrong, natural to us previous to any conſideration of law or command. But when we have aſcended to the notion of a divine natural law, requiring whatever tends to the general good, and containing all theſe practical dictates of right reaſon, our definitions of moral qualities may be abridged by referring them to a law; and yet they will be of the ſame import; if we ſtill remember that the grand aim of the law

of nature is the general good of all, and of every part as far as the general intereſt allows it.

A Right therefore may be defined, "a faculty "or claim eſtabliſhed by law to act, or poſſeſs, or ob- "tain ſomething from others;" tho' the primary notion of right is prior to that of a law, nor does it always include a reference to the moſt extenſive intereſt of the whole of mankind. For by our natural ſenſe of right and wrong, and our ſympathy with others, we immediately approve any perſon's procuring to himſelf or his friends any advantages which are not hurtful to others, without any thought either about law or the general intereſt of all. For as the general happineſs is the reſult of the happineſs of individuals, and God has for the benefit of each individual, and of families, implanted in each one his private appetites and deſires, with ſome tender natural affections in theſe narrower ſyſtems: actions flowing from them are therefore naturally approved, or at leaſt deemed innocent, and that immediately for themſelves, unleſs they ſhould appear hurtful to others, or oppoſite to ſome nobler affection. Hence every one is conceived to have a *right* to act or claim whatever does no hurt to others, and naturally tends to his own advantage, or to that of perſons dear to him.

And yet this we muſt ſtill maintain, that no private right can hold againſt the general intereſt of all. For a regard to the moſt extenſive advantage of the whole ſyſtem ought to control and limit all the rights of individuals or of particular ſocieties.

II. Now ſince a friendly ſociety with others, and a mutual intercourſe of offices, and the joint aids of many, are abſolutely neceſſary not only to the pleaſure and convenience of human life, but even to the preſervation of it, which is ſo obvious * that we need not reaſon upon it. Whatever appears ne-

* See Cicero's Offices, B. ii, 3, 4, 5, &c.

ceſſary for preſerving an amicable ſociety among men muſt neceſſarily be enjoined by the Law of Nature. And in whatever circumſtances the maintaining of peace in ſociety requires, that certain actions, poſſeſſions, or claims ſhould be left free and undiſturbed to any one, he is juſtly deemed to have a *right* ſo to act, poſſeſs, or claim from others. As ſome law anſwers to each right, ſo does an *obligation*. This word has two ſenſes, 1. We are ſaid to be *obliged* to act, or perform to others, "when the "inward ſenſe and conſcience of each one muſt "approve ſuch action or performance, and muſt "condemn the contrary as vitious and baſe:" in like manner we conceive an obligation to omit or abſtain. This ſort of obligation is conceived previous to any thought of the injunction of a law. 2. Obligation is ſometimes taken for "a motive of "intereſt ſuperior to all motives on the other ſide, "propoſed to induce us to certain actions or per-"formances, or omiſſions of action." Such motives indeed muſt ariſe from the laws of an omnipotent Being. This latter meaning ſeems chiefly intended in theſe metaphorical definitions of great authors, who would have all obligations ariſe from the law of a ſuperior *, "*a bond of right binding us* "*by a neceſſity of acting or abſtaining*" or an "*abſo-*"*lute neceſſity impoſed upon a man, to act in certain* "*manner.*"

III. RIGHTS according as they are more or leſs neceſſary to the preſervation of a ſocial life are divided into *perfect* and *imperfect*. Perfect rights are of ſuch neceſſity that a general allowing them to be violated muſt entirely deſtroy all ſociety; and therefore ſuch rights ought to be maintained to all even by

* Theſe are the definitions of *Puffendorf*, and of *Barbeyrac* in his notes on *Grotius*, as alſo in his animadverſions on a *Cenſure upon Puffendorf*, aſcribed commonly to Mr. *Leibnitz*, publiſhed with the French Tranſlation of the book *de Officio Hominis et Civis*.

violence: and the ſevereſt puniſhments inflicted upon the violation of them.

Imperfect rights or claims are ſometimes indeed of the greateſt conſequence to the happineſs and ornament of ſociety, and our obligation to maintain them, and to perform to others what they thus claim, may be very ſacred: yet they are of ſuch a nature that greater evils would enſue in ſociety from making them matters of compulſion, than from leaving them free to each one's honour and conſcience to comply with them or not. 'Tis by a conſcientious regard to theſe imperfect rights or claims of others, which are not matters of compulſion, that virtuous men have an occaſion of diſplaying their virtues, and obtaining the eſteem and love of others.

Yet the boundaries between perfect and imperfect rights are not always eaſily ſeen. There is a ſort of ſcale or gradual aſcent through ſeveral almoſt inſenſible ſteps, from the loweſt and weakeſt claims of humanity to thoſe of higher and more ſacred obligation, 'till we arrive at ſome imperfect rights ſo ſtrong that they can ſcarce be diſtinguiſhed from the perfect, according to the variety of bonds among mankind, and the various degrees of merit and claims upon each other. Any innocent perſon may have ſome claim upon us for certain offices of humanity. But our fellow-citizen or neighbour would have a ſtronger claim in the like caſe. A friend, a benefactor, a brother, or a parent, would have ſtill a ſtronger claim, even in theſe things which we reckon matters of imperfect obligation.

There's alſo a third kind of Right, or rather an external ſhew of it, which ſome call an *external right*: when ſome more remote conſiderations of diſtant utility require that men ſhould not be reſtrained in certain actions, enjoyments or demands upon others, which yet are not conſiſtent with a good conſcience, or good moral diſpoſitions. Theſe ex-

ternal ſhews of Right, which will never ſatisfy a good man as a foundation of conduct, often ariſe from imprudent contracts raſhly entered into by one of the parties, and often even from the wiſeſt Civil Laws.

'Tis plain here, that there can be no oppoſition either between two perfect rights or two imperfect ones. But imperfect rights may be contrary to theſe called external. Since however the imperfect rights are not matters of juſt force or compulſion, wars, which are violent proſecutions or defences of ſome alleged rights, cannot be juſt on both ſides.

IV. RIGHTS are alſo divided into the *alienable*, and ſuch as *cannot be alienated* or transferred. Theſe are alienable, where the transfer can actually be made, and where ſome intereſt of ſociety may often require that they ſhould be transferred from one to another. Unleſs both theſe qualities concur, the Right is to be deemed unalienable. 'Tis plain therefore, for inſtance, that for defect of both theſe qualities, our opinions in matters of Religion are unalienable, and ſo are our internal affections of devotion; and therefore neither of them can be matters of [illegible] or Human laws. No man can avoid judging according to the evidence which appears to him; nor can any intereſt of ſociety require one to profeſs hypocritically contrary to his inward ſentiments; or to join in any external worſhip which he judges fooliſh or impious, and without the ſuitable affections.

From the general account given of the nature of Right, theſe muſt be the two fundamental precepts of a ſocial life; firſt, that "no man hurt another" or occaſion any loſs or pain to another which is neither neceſſary nor ſubſervient to any ſuperior intereſt of ſociety. The ſecond is "that each on his "part, as he has opportunity, ſhould contribute "toward the general intereſt of ſociety;" at leaſt by contributing toward the intereſt of his friends

or family. And he who innocently profits a Part, contributes alſo in fact to the good of the whole.

CHAP. III.

Concerning the VARIOUS DEGREES *of* VIRTUE *and* VICE, *and the Circumſtances on which they depend.*

THAT inward power called *Conſcience*, ſo much talked of, is either this very moral ſenſe or faculty we have explained, or includes it as its moſt eſſential part; ſince without this ſenſe we could diſcern no moral qualities. But when this is preſuppoſed, our reaſon will ſhew what external actions are laudable or cenſurable according as they evidence good or evil affections of ſoul. *Conſcience* is is commonly defined to be a "man's judgment concerning the morality of his actions;" or his judgment about his actions as to their conformity or contrariety to the law. And as an action is then ſaid to be *imputable*, when by its proceeding from his will it evidences his temper and affections to be virtuous or vitious.

The common diviſions of conſcience, into *certain*, *probable*, *doubtful*, or *ſcrupulous*, need no explication. When we deliberate about our future actions 'tis called *antecedent*: when we judge of paſt actions, 'tis called *ſubſequent conſcience*.

The antecedent conſcience of a good man, or his previous deliberations, turn upon the tendencies of actions to the general good of all, or to the innocent enjoyment of individuals, or of parts of this ſyſtem: and this tendency makes an action *materially good*. For actions are called good *materially*, by their having this tendency, or their being required by the law, whatever were the motives or

views of the agent. The *ſubſequent conſcience* regards chiefly the motives, deſign, and intention, on which depends what is called *formal goodneſs*. For ſuch actions are called formally good, as agree with the law in all reſpects, and flow from good affections.

II. THE circumſtances regarded in comparing the morality of actions are of three ſorts, as they relate either to the *underſtanding* or to the *will*, or to the *importance* of the action itſelf conſidered along with the abilities of the agent.

But here 'tis previouſly certain, that ſuch actions alone are matter of praiſe or cenſure, or can be *imputed*, which are done with knowledge and intention, and which had not happened if we had ſeriouſly reſolved againſt them. And that in like manner no omiſſion can be imputed where the moſt hearty inclination would have been without effect. Such actions or omiſſions are called *free* or voluntary, and ſuch alone carry any evidence of the goodneſs or depravity of the temper. Neceſſary events therefore, which would happen even without our knowledge, or againſt our will, are no matter of imputation; nor is the omiſſion of an impoſſibility, which no deſire of ours could have accompliſhed, any matter of imputation. But this is not the caſe with ſuch actions as are only called neceſſary on this account, that the agent's inclination and turn of temper that way, or his paſſions were ſo ſtrong that during that temper of his he could not will otherways. Nor is the caſe in omiſſions of ſuch actions as are therefore only called impoſſible, becauſe ſuch was the perſon's depravity of temper that he could have no inclination to them. Virtue and vice are primarily ſeated in the temper and affections themſelves; and 'tis generally in our own power in a conſiderable degree to form and alter our tempers and inclinations.

There are three claſſes of actions called involuntary, to wit, ſuch as we are compelled to by ſupe-

rior *external force*; ſuch as we do *ignorantly*; and ſuch as are called *mixed*, when we do what of itſelf what is very diſagreeable in order to avoid ſome greater evil. What men are driven to by external force is imputable only to him who uſes the violence. What is done through ignorance is imputed differently according as the ignorance is culpable or not. But the actions called *mixed* are all imputed, as they are truly free, and proceed from the will: but they are imputed as innocent or as criminal, according as the evil avoided was in its whole effect greater or leſs than the evil done to avoid it. Now moral evils, and ſuch as hurt the common intereſt, are greater than the natural evils, and ſuch as hurt only the agent.

III. As to the circumſtances relating to the underſtanding: altho' all moral virtue and vice is primarily ſeated in the will, yet frequently our ignorance or error about the nature of things we are employed about may affect the morality of actions. And altho' the beſt of men muſt intend what is in fact evil, if it appear to them to be good; yet ſuch miſtakes are frequently blameable, if the error or ignorance was any way voluntary, and what could have been avoided by ſuch diligence as good men commonly uſe in ſuch caſes. That ignorance indeed which is wholly involuntary and *invincible* excuſes from all blame.

Voluntary or vincible ignorance is either *affected*, when men directly deſign to avoid knowing the truth with ſome apprehenſions of it: or what ariſes from groſs *negligence* or ſloth; when men have little ſolicitude about their duty, and take little thought about their conduct. The former no way diminiſhes the guilt of the action. The latter may be ſome alleviation of guilt, and that more or leſs, according as the ſloth was greater or leſs, or the diſcovery of the truth was more or leſs difficult.

Ignorance truly involuntary is ſo either *in itſelf but not in its cauſe*, or it is involuntary in both reſpects. The former is the caſe when at preſent, and in the midſt of action, men cannot diſcover the truth, tho' they earneſtly deſire it; but had they formerly uſed the diligence required of good men they might have known it. The latter is the caſe when no prior culpable negligence occaſioned our ignorance; and this ſort excuſes altogether from guilt, but not the former. There is indeed no moral turpitude at preſent ſhewn by a man's acting what at preſent appears to him to be good; but ignorance or error, tho' at preſent invincible, may be a ſtrong evidence of a prior culpable negligence, which may diſcover a depravity of temper.

Ignorance is either about matter *of law*, or matter *of fact*. This diviſion takes place chiefly in poſitive laws: for in the law of nature if the fact, or natural tendency and conſequents of actions, beneficial or pernicious to ſociety, are known, this itſelf makes the laws known.

IV. FROM theſe principles we may anſwer the chief queſtions about an erroneous conſcience. 1. Error or ignorance of the law of nature is generally culpable; but in very various degrees, according to the different degrees of natural ſagacity in men, and their different opportunities of information and inquiry, and as the laws themſelves are more or leſs eaſy to be diſcovered.

2. To counteract conſcience in doing what we deem vitious, or in omitting what we take to be our duty, muſt always be evil; as it ſhews ſuch depravation of the temper that a ſenſe of duty is not the ruling principle. But this guilt too is of very different degrees, according to the ſanctity of the ſeveral duties omitted, or the turpitude of crimes we commit; and the different ſorts of motives, more or leſs favourable, which excited us to this conduct. For ſometimes 'tis only the terror of the moſt formidable evils which almoſt

enforce us, ſometimes lovely principles of friendſhip, gratitude, filial duty, parental affection, or even love of a country, which induce us to act againſt our conſciences; now in ſuch caſes the guilt is conſiderably alleviated.

3. In following an erroneous conſcience, the guilt conſiſts not in thus following it, or doing what we deem to be our duty; but it lies rather in ſomething culpable in the error itſelf, or in the cauſes of it, and this in various degrees. For ſ me errors of themſelves ſhew a baſe temper, influenced directly by malice, pride, or cruelty: others ſhew only negligence and inattention, or that the nobler affections of heart are too weak.

4. 'Tis generally true that counteracting even an erroneous conſcience is worſe than following it. In both caſes the guilt of the error is equal; and he who counteracts his conſcience ſhews alſo a new contempt of the divine law. And yet where ſome of the more humane and lovely diſpoſitions carry it againſt the commands of an erroneous conſcience, guided rather by authority, and ſome confuſed notions of duty, than any diſtinct view of moral excellence in what it commands, the diſobeying it may be a better ſign of the temper than following its dictates. As in the caſe of one who deems it his duty to perſecute for Religion, and yet is reſtrained from it by humanity and compaſſion.

V. THE circumſtances affecting the morality of actions which relate to the Will muſt appear from what was ſaid above; that all kind affections of ſoul are amiable, and the contrary vitious; as is alſo exceſſive ſelf-love, and a keen deſire of ſenſual pleaſures; that the calm ſtable affections of a friendly ſort are more lovely, than the turbulent paſſions; and that the more extenſive are the more honourable.

1. Such duties therefore as are done deliberately, and from ſteady purpoſe of heart, are more lovely than thoſe which proceed from ſome ſudden guſts of kind paſſions.

2. And in like manner ſuch injuries as are done deliberately and with premeditation, or from inveterate ill-will, are much worſe than thoſe which ariſe from ſudden anger, fear, or ſome paſſionate bent toward pleaſure.

As to all motions of anger and fear, which aim at the repelling ſome impendent evil, we may obſerve; that as the firſt ſtep, and moſt neceſſary one, toward happineſs and eaſe, is the warding off of pain, and the firſt office of virtue is the avoiding vice; the paſſions of *averſion from evil* are naturally ſtronger in their kind, than thoſe purſuing poſitive good; and as it is harder to reſiſt their impulſes, they are greater alleviations of guilt, in vitious actions, though none of them can wholly take it away; ſince it is always in one's power, who has an hearty concern about virtue, and ſets himſelf to it, to reſtrain theſe paſſions in a great meaſure, and prevent their breaking out into external actions.

3. We cannot expect the ſame degrees of beneficence, or a like extent of it, in all equally good characters, conſidering the different tempers of men, their different abilities, opportunities, leiſure, or hurry of buſineſs.

4. There are great differences in point of moral excellence among the ſeveral narrower ſorts of kind affections, according to their different ſprings or cauſes, ſome of which are far more honourable than others. That good will which ariſes from ſome conjunctions of intereſt, ſo that we wiſh well to others only for our own intereſt ariſing from their proſperity, though it may be free from any moral turpitude, yet has nothing morally amiable; ſince ſuch affection may be found in the worſt of men, and may have the worſt for its object: nor is there much moral beauty in the affections merely founded on the ties of blood, or in the paſſions of lovers. Theſe motions are generally turbulent, and are all of a narrower kind: and ſuch is the conſtitution of our nature, that they are often found among ſuch as ſhew ſcarce any other virtues.

nd yet the want of ſuch affections in ſuch relations, ould ſhew a great depravity. That heart muſt be ngularly hard and inſenſible to kind affections which annot be moved to them by theſe ſtrong natural auſes.

There is an higher moral beauty in that good-will nd gratitude which ariſes from benefits received, here it is truly ſincere, without any ſhew or oſten- tion deſigned to obtain further favours. In a like aſs we may reckon pity and compaſſion, with a de- re of giving relief to the diſtreſſed. And yet theſe wo are of a narrower nature: and ſuch is the frame f the human heart, ſo ſtrong are theſe impulſes, that one but monſters are void of all degrees of ſuch af- ctions. In the common offices of theſe kinds there no eminent virtue; but in neglecting or omitting em, contrary to ſuch ſtrong natural impulſes, there uſt be evidenced great depravation.

That love ariſing from a conformity of virtuous ſpoſitions, which we call friendſhip, is far more vely: as it ſhews an high reliſh for moral excel- nce, and an affection which would extend to many a conſiderable degree, if like virtues appeared in em. A ſtrong love for one's country, is yet more xcellent; but of all ſocial affections that is moſt miable, which, conjoined with wiſdom, is ſtedfaſtly t on promoting the moſt extenſive happineſs of all ankind, and doing good to each one as there is op- ortunity.

And yet the common intereſt of the whole, which oth the nobler deſires of the ſoul, and our moral nſe chiefly recommend to our care, plainly requires at each one ſhould more peculiarly employ his acti- ty for the intereſt of ſuch whom the ſtronger ties of ature have peculiarly recommended, or entruſted to s care, as far as their intereſts conſiſt with the gene- l good, and that his ordinary occupations ſhould be eſtined for their benefit. The bulk of mankind have o ability or opportunity of promoting the general in- reſt any other more immediate way.

VI. THESE ſeem to be general rules of eſtimation in this matter. The ſtronger that the natural impulſe is in any narrower ties of affection, the leſs there is of moral beauty in performing any ſuppoſed offices; and the greater is the moral deformity of omitting them. The ſtronger the moral obligation is to any performance, or the *right* by which others claim it, the leſs laudable is the performance, and the more cenſurable and injurious is the omiſſion or refuſal of it. And the weaker the *right* or claim of others is, 'tis the leſs vitious to have omitted or refuſed any office, and it is the more honourable to have readily performed it; provided we ſhew a readineſs proportionably greater in performing ſuch offices as others have a more ſacred claim to.

In comparing vitious actions or deſigns, other circumſtances being equal, the turpitude is the leſs, the greater or the more ſpecious the motives were which induced us to it. To have violated the laws of univerſal juſtice out of zeal for our country, or to have neglected the intereſt of our country from zeal for our friends, or from gratitude to our benefactors, is not ſo baſe and deformed, as if one had neglected or counteracted theſe more extenſive intereſts for his own gain, or for any ſenſual gratification; this laſt excuſe is indeed the meaneſt of all.

As far as any views of one's own advantage have excited a man to ſuch actions as are in their own nature good, ſo far the moral beauty is abated: and when there was no other affection moving him, there remains no moral beauty, though the action may ſtill be innocent, or void of any vice.

Where any ſuch views of intereſt as muſt exceedingly move even the beſt of men, have excited one to what is culpable, the moral turpitude is diminiſhed on that account. The paſſions excited by the preſent apprehenſion of ſome great evil make a much greater impreſſion upon the beſt of men, than ſuch as ariſe from proſpects of any new advantages or pleaſures; and therefore they are much ſtronger alleviations of

guilt. Keen ſelfiſhneſs, or love of pleaſures, are of themſelves diſhonourable; and ſhew that the meaner parts of the ſoul have uſurped a baſe tyranny over its nobler faculties.

The honourable offices we undertake, if they are expenſive, toilſome, or dangerous to ourſelves, they are on this account the more honourable. And yet ſince the grand aim of the good man is the promoting the publick good, and not the pleaſing himſelf with an high admiration of his own virtues; he muſt alſo endeavour to fortify his ſoul, as much as he can, to ſurmount all allurements or temptations tending a contrary way: and this is moſt effectually done by a deep perſuaſion that a perfectly juſt and wiſe Providence governs the world, will take care of the intereſts of the virtuous; and that the only path to an happy immortality is by virtue: the good man therefore will be far from excluding out of his counſels theſe glorious hopes, nay he will cheriſh and confirm them; that he may thus become the more inflexible and ſteady in every virtuous deſign.

VII. As to the *importance* of actions and the *abilities* of the agents, theſe general rules ſeem to hold.

1. That, other circumſtances being equal, the moral goodneſs of actions is proportioned to their importance to the common intereſt, which the agent had in view.

2. When other circumſtances are equal, the virtue of an action is *inverſely* as the abilities of the agent: that is, when the importance of two actions is equal, he ſhews the greater virtue who with ſmaller abilities, equals the more potent in his beneficence.

3. The like obſervations hold about the vice of evil actions, that it is *directly* as their importance to the public detriment foreſeen, and *inverſely* as the abilities of the agents: or that theſe are worſt which have the worſt tendency; or which undertaken by perſons of little power, ſhew that they have maliciouſly exerted all their force in doing miſchief.

4. In eſtimating the importance of actions, we muſt take in that whole ſeries of events, which might have been foreſeen to enſue upon them, and which without theſe actions would not have happened; whether theſe events be the natural direct effects of the actions, or happened by the intervention of other agents, who by theſe actions have been provoked or incited to take certain meaſures. For every good man will conſider all that may enſue upon any ſteps he takes; and will avoid doing any thing contrary to the common utility, or which may without neceſſity give an occaſion or temptation to any public detriment, either more or leſs extenſive.

As to the events or effects of actions, this holds; that any publick advantage enſuing, though it had been foreſeen, yet if it was not intended and deſired, adds nothing to the virtue of the action, nor is it matter of praiſe; as it ſhews no goodneſs of temper. But publick detriment which might have been foreſeen, though it was not directly deſired, nor perhaps actually foreſeen, may add to the moral turpitude. Becauſe that even a negligence and unconcernedneſs about the publick intereſt is of itſelf vitious, ſhewing either an entire want, or a great defect in goodneſs of temper.

5. But we muſt not pronounce every action to be evil from which ſome evil conſequences were foreſeen to enſue; unleſs theſe evils were directly deſired for themſelves. The conſequences of moſt external actions are of a mixed nature, ſome good, ſome bad. There is no courſe of life which has not its own advantages and diſadvantages; all which are indeed to come into computation. Theſe actions therefore alone are good, on account of their importance, whoſe good conſequences foreſeen overballance their evil conſequences; and when the good could not have been obtained without theſe or equal evils: and thoſe actions are evil in this reſpect, where the evil conſequences overballance all the good; or where the good might have been obtained without ſuch evils, or with a ſmaller degree of them.

6. But in the ſight of God and Conſcience theſe events are imputed not as they actually happen, but according as there was a probable proſpect that they might happen. For the moral good and evil conſiſts not in the external events, but in the affections and purpoſes of the ſoul. And hence two perſons may be equal in guilt, though one of them, reſtrained by accident or the prudence of others, has done no damage, and the other has done a great deal. And he is equally laudable who has made noble attempts, to the utmoſt of his power, though unſucceſsfully, with thoſe to whom all things have ſucceeded according to their wiſhes.

VIII. AMONGST the circumſtances which affect both the will and the ability of the agents, may be reckoned *cuſtom* and *habit*: which though they rather abate than increaſe the pleaſure of particular enjoyments, yet increaſe the regret and uneaſineſs in the want of what we have been inured to, make us more inclined to purſue like enjoyments, and give us greater facility and readineſs in any courſe of action. As the acquiring of ſuch habits was voluntary, ſo it ſtill remains in our power to abate their force or take them away altogether by cautious abſtinence or frequent intermiſſion of ſuch actions and enjoyments. However therefore an habit of virtue, making each office leſs difficult, may ſeem to abate a little of the excellence of each particular office, yet it plainly adds to the beauty and excellence of the character: and on the other hand habits of vice, however they may a little abate the deformity of each particular vitious action, yet plainly ſhew the character to be the more deformed and odious.

Sometimes it may happen that one is juſtly praiſed on account of the good actions of other men, nay that even the deſirable effects of natural inanimate cauſes are imputed to him as honourable, when by ſome honourable actions of his own he has contributed to theſe events. And in like manner the damages or injuries immediately done by other men or inanimate

cauſes, are imputed as crimes, when one has occaſioned them by any action or omiſſion contrary to his duty.

CHAP. IV.

Concerning the NATURAL RIGHTS *of* INDIVIDUALS.

WE have already ſhewn that the ſeveral duties of life may be naturally explained by explaining the ſeveral *rights* belonging to men, and the correſponding obligations, in all the ſeveral ſtates and relations they ſtand in to each other. By a *ſtate* we underſtand "ſome permanent condition one is placed in, as it "includes a ſeries of rights and obligations." Our ſtate is either that of the *freedom in which nature placed us*; or an *adventitious* ſtate, introduced by ſome human acts or inſtitution.

The ſtate of *natural liberty*, is "that of thoſe who "are ſubjected to no human power:" which plainly obtained at firſt in the world, among perſons adult and exempt from the parental power. This ſtate too muſt always ſubſiſt among ſome perſons, at leaſt among the ſovereign Princes of independent ſtates, or among the ſtates themſelves, with reſpect to each other.

The character of any ſtate is to be taken from the rights and laws which are in force in it, and not from what men may do injuriouſly contrary to the laws. 'Tis plain therefore from the preceding account of our

nature and its laws, that the ſtate of nature is that of peace and good-will, of innocence and beneficence, and not of violence, war, and rapine: as both the immediate ſenſe of duty in our hearts, and the rational conſiderations of intereſt muſt ſuggeſt to us *.

For let us obſerve what is very obvious, that without ſociety with a good many of our fellows, their mutual aids, and an intercourſe of friendly offices, mankind could neither be brought to life or preſerved in it; much leſs could they obtain any tolerably convenient or pleaſant condition of life. 'Tis plain too that no one has ſuch ſtrength that he could promiſe to himſelf to conquer all ſuch as he may deſire to wrong or ſpoil, and all ſuch enemies as he may raiſe up againſt himſelf by an injurious courſe of life; ſince an honeſt indignation at wrongs will make many more enemies to him than thoſe he immediately injures: and there are few who won't find conſiderable ſtrength to avenge themſelves or their neighbours, when they have conceived a juſt indignation. And then men have it generally in their power much more certainly and effectually to make others uneaſy and miſerable, than to make others eaſy and happy. External proſperity requires a perfectly right ſtate of the body, and all its tender and delicate parts, many of which may be diſturbed and deſtroyed by very ſmall forces; it requires alſo a conſiderable variety of external things, which may be eaſily damaged, taken away, or deſtroyed. A juſt conſideration of this infirm, uncertain condition of mankind, ſo that their proſperity may ſo eaſily be diſturbed, muſt engage every wiſe man rather to cultivate peace and friendſhip with all, as far as poſſible, than to provoke any by unneceſſary enmity or injury.

II. THE rights of men according as they immediately and principally regard either the benefit of ſome *individual*, or that of ſome *ſociety* or body of

* This ſuffices to overturn the fallacious reaſonings of *Hobs* upon the ſtate of nature as a ſtate of war of all againſt all.

people, or of *mankind* in general as a great community, are divided into *private*, *public*, and *common to all*. The *private* rights of individuals are pointed out by their ſenſes and natural appetites, recommending and purſuing ſuch things as tend to their happineſs: and our moral faculty or conſcience ſhews us, that each one ſhould be allowed full liberty to procure what may be for his own innocent advantage or pleaſure, nay that we ſhould maintain and defend it to him.

To diſcover therefore theſe *private rights* we ſhould firſt attend to the ſeveral natural principles or appetites in men, * and then turn our views toward the general intereſts of ſociety, and of all around them: that where we find no obſtruction to the happineſs of others, or to the common good, thence enſuing, we ſhould deem it the *right* of each individual to do, poſſeſs, or demand and obtain from others, whatever may tend to his own innocent advantage or pleaſure.

Private rights are either *natural* or *adventitious*. The former ſort, nature itſelf has given to each one, without any human grant or inſtitution. The adventitious depend upon ſome human deed or inſtitution.

III. THE private natural rights are either *perfect* or *imperfect*. Of the perfect kind theſe are the chief. 1. A right to life, and to retain their bodies unmaimed. 2. A right to preſerve their chaſtity. 3. A right to an unblemiſhed character for common honeſty, ſo as not to be deemed unfit for human ſociety. 4. A right of liberty, or of acting according to one's own judgment and inclination within the bounds of the law of nature. 5. A right over life, ſo far that each one, in any honourable ſervices to ſociety or his friends, may expoſe himſelf not only to dangers, but to certain death, when ſuch public good is in view as overballances the value of his life. This our conſcience, or moral ſenſe, and love of virtue will ſtrongly recommend to us in many caſes. 6. There is alſo a ſenſe

* See *Grotius* de Jure Belli, &c. I. c. 2. 1. See alſo Sect 1. of the preceding chapter.

deeply infixed by nature, of each one's *right of private judgment*, or of judging for himſelf in all matters of duty, eſpecially as to religion; for a baſe judgment or opinion cannot of itſelf be injurious to others: and 'tis plain no man can without guilt counteract his own conſcience; nor can there be any vritue in diſſimulation or hypocriſy, but generally there is great guilt in it. Our ſentiments therefore about religion and virtue cannot be matter of commerce or contract, ſo as to give others a right over them. Such commerce is no way requiſite for any good in ſociety; nor is it in one's power to judge or think as another ſhall command him. All engagements or contracts of this kind are null and void. Suppoſe one has judged amiſs and has falſe opinions: yet while he injures no man, he is uſing his own *external right*; that is, though he acts amiſs, yet much greater evils would enſue if any power were veſted in others to compel him by penalties or threatenings of tortures, either to a change of his ſentiments, or to a profeſſion of it.

Each one alſo has a natural right to the uſe of ſuch things as nature intended to remain common to all; that he ſhould have the ſame acceſs with others, by the like means, to acquire adventitious rights; and that he ſhould find equal treatment with his equals. Men have likewiſe rights to marriage with ſuch as are willing to inter-marry with them, provided they be under no prior bonds of marriage, or hindred by any other juſt impediment: nor can any third perſon or ſociety which has not acquired any juſt power over the parties, pretend a right to obſtruct their deſigns of inter-marriage; or to hinder any who are not their ſubjects from entering into any other innocent aſſociations or commerce of any kind for their own behoof.

The ſenſe of every one's heart, and the common natural principles, ſhew that each one has theſe perfect rights; nor without maintaining them can there be any ſocial life: ſo that they are alſo confirmed by conſiderations of common utility, and our more extenſive affections.

IV. In this reſpect all men are originally *equal*, that theſe natural rights equally belong to all, at leaſt as ſoon as they come to the mature uſe of reaſon; and they are equally confirmed to all by the law of nature, which requires that we ſhould conſult the intereſt of each individual as far as the common utility will allow; and maintain to the feeble and weak their ſmall acquiſitions or advantages, as well as their greater acquiſitions or advantages to the ingenious and active. For 'tis plainly for the common good, that no mortal endued with reaſon and forethought ſhould without his own conſent, or crime, be ſubjected to the will of his fellow, without regard to his own intereſt, except in ſome rare caſes, that the intereſt of a ſociety may make it neceſſary. None of mankind are ſo ſtupid and thoughtleſs about their own intereſts, as not to count it next to death to have themſelves and all that's dear to them, ſubjected to another's pleaſure or caprice, and thus expoſed to the greateſt contumelies. Nature makes none maſters, none ſlaves: and yet the wiſer and better ſort of men have many imperfect rights ſuperior to thoſe of others, and ſuperior offices and ſervices of humanity are due to them.

But as nature has ſet no obvious or acknowledged marks of ſuperior wiſdom and goodneſs upon any of mankind; and often weak men may have high notions of their own wiſdom; and the worſt of men may make the greateſt ſhews of goodneſs, which their fellows cannot diſcover to be hypocritical; 'tis plain that no pretences of ſuperior wiſdom or goodneſs will juſtify a man in his aſſuming power over others without their own conſent; this would be plainly everſive of the common intereſt, and the ſource of perpetual wars.

V. To every imperfect right of individuals there anſwers a like *obligation* or duty which our conſcience plainly enjoins, and in ſome caſes moſt ſacredly. Theſe are the chief imperfect rights: each one may juſtly claim ſuch offices as are profitable to him, and no burden or expence to the performer. Nay every

innocent perſon has a right to ſuch offices of others, as are of high advantage to him, and of ſmall burden or expence to the performers. This is particularly the caſe of men under calamities, needing the charitable aids of others. Men of eminent characters, though under no calamity, have a right to ſome higher offices from others, as particularly to their friendly ſuffrages for their advantage or promotion. Each one whoſe vices have not made him infamous, has a right to be admitted on equitable terms into any ſocieties civil or religious, which are inſtituted in his neighbourhood, for his more convenient ſubſiſtence, or his improvement in piety. And laſtly, each one, who has not forfeited by ſome crime, has a right to be treated on an equal footing of humanity with his equals, and with others in proportion to their merits.

VI. CONCERNING beneficence and liberality, theſe general maxims are evident, * that the importance of any benefit to the receiver, is proportioned jointly to the quantity of the benefit and his indigence: and that benefits are leſs burdenſome to the giver the ſmaller their value is and the greater his wealth. Hence liberality may be exceedingly advantageous in many caſes to him that receives it, and yet of ſmall or no burden to the giver.

Beneficence, which is peculiarly becoming a good man, and eminently diſplays the goodneſs of his heart, ought to be practiſed with theſe cautions; firſt, that it don't hurt the perſons it is employed about or the community. 2dly, That it be proportioned to our fortunes, ſo as not to exhauſt its own fountain. 3dly, That it be proportioned to the merits or claims of others. Among theſe claims we regard, firſt, the moral characters of the objects, and next their kind affections towards us; and thirdly, the ſocial intercourſes we have had with them; and laſtly, the good offices we formerly received from them. None of theſe conſiderations are to be neglected, and

* This is taken from *Cicero de Officiis*, Lib. 14, 15, &c.

leaſt of all the laſt one; ſince there is no obligation more ſacred than that of gratitude, none more uſeful in life; nor is any vice more odious than ingratitude, or more hurtful in ſociety. When therefore in certain caſes we cannot exerciſe all the beneficence we deſire, offices of gratitude ſhould take place of other offices of liberality.

CHAP. V.

Of REAL ADVENTITIOUS RIGHTS *and* PROPERTY.

THE adventitious rights conſtituted by ſome human deed or inſtitution are either *real* or *perſonal*. The real terminate upon ſome certain definite goods: the perſonal terminate upon ſome perſon, not peculiarly reſpecting one part of his goods more than any other.

The principal real right is *property*; the ſpring of which is this, Firſt, the external ſenſes and appetites of men naturally lead to the uſe of external things: and the like ſenſes in brute animals (who have no ſuperior faculties which could controul theſe ſenſes and appetites) lead to the ſame: this ſufficiently ſhews that God has graciouſly created things inanimate for the uſe of animal life: now man is the chief animal in this earth. Reflection confirms the ſame; ſince all theſe curious vegetable forms muſt ſoon periſh of their

own accord, and therefore could be intended for no other uſe, ſo worthy of the Divine goodneſs, as that of ſupporting animal life agreeably, and chiefly human life.

II. THERE is indeed implanted in men a natural kindneſs and ſenſe of pity, extending even to the Brutes, which ſhould reſtrain them from any cruelty toward them which is not neceſſary to prevent ſome miſery of mankind, toward whom we muſt ſtill have a much higher compaſſion. But men muſt ſoon diſcern, as they increaſe in numbers, that their lives muſt be exceedingly toilſome and uneaſy unleſs they are aſſiſted by the beaſts fitted for labour. They muſt alſo ſee that ſuch beaſts of the gentler kinds and eaſily tameable, whoſe ſervices men need moſt, cannot be preſerved without the provident care of men; but muſt periſh by hunger, cold, or ſavage beaſts: nor could men unaſſiſted by work-beaſts, and over-burdened in ſupporting themſelves, employ any cares or labour in their defence. Reaſon therefore will ſhew, that theſe tractable creatures fitted for labour are committed to the care and government of men, that being preſerved by human care, they may make a compenſation by their labours. And thus a *community* or ſociety is plainly conſtituted by nature, for the common intereſt both of men and theſe more tractable animals, in which men are to govern, and the brute animals to be ſubject.

Such tractable animals as are unfit for labours, muſt make compenſation to men for their defence and protection ſome other way, ſince their ſupport too requires much human labour; as they muſt have paſtures cleared of wood, and be defended from ſavage creatures. Men muſt be compenſated by their milk, wool, or hair, otherwiſe they could not afford them ſo much of their care and labour.

III. NAY, if upon the increaſe of mankind they were ſo ſtraitened for food, that many muſt periſh by famine, unleſs they feed upon the fleſh of brute animals; Reaſon will ſuggeſt that theſe animals, ſlaugh-

tered ſpeedily by men for food, periſh with leſs pain, than they muſt feel in what is called their natural death; and were they excluded from human protection they muſt generally periſh earlier and in a worſe manner by hunger, or winter colds, or the fury of ſavage beaſts. There is nothing therefore of injuſtice or cruelty, nay 'tis rather prudence and mercy, that men ſhould take to their own uſe in a gentler way, thoſe animals which otherwiſe would often fall a more miſerable prey to lions, wolves, bears, dogs, or vultures.

Do not we ſee that the weaker tribes of animals are deſtined by nature for the food of the ſtronger and more ſagacious? Were a like uſe of inferior animals denied to mankind, far fewer of theſe animals fit for human uſe would either come into life or be preſerved in it; and the lives of theſe few would be more expoſed to danger and more miſerable. And then, the intereſt of the whole animal ſyſtem would require that thoſe endued with reaſon and reflection, and conſequently capable of higher happineſs or miſery, ſhould be preſerved and multiplied, even though it occaſioned a diminution of the numbers of inferior animals. Theſe conſiderations abundantly evidence that *right* of mankind to take the moſt copious uſe of inferior creatures, even thoſe endued with life. And yet all uſeleſs cruelty toward the brute animals is highly blameable.

IV. THE grounds of *property* among men are of a different nature. Complete unlimited *property* is "the "right of taking the full uſe of any goods, and of "alienating them as we pleaſe." Some degree of ingenuity and ſtrength for occupying certain things, is granted by nature to every one; mankind alſo naturally are prone to action. Our deſire of ſelf-preſervation and our tender affections excite us to occupy or acquire things neceſſary or uſeful for ourſelves and thoſe we love: every man of ſpirit naturally delights in ſuch exertion of his natural powers, and applauds himſelf in the acquiſition of what may be matter of

liberality and friendlineſs. Our ſenſe of right and wrong alſo ſhews, that it muſt be inhuman and ill-natured, for one who can otherwiſe ſubſiſt by his own induſtry, to take by violence from another what he has acquired or improved by his innocent labours. It is alſo obvious that the ſpontaneous fruits of the uncultivated earth are not ſufficient to maintain the hundredth part of mankind; and that therefore it is by a general diligence and labour that they muſt be maintained. Whatever method therefore is neceſſary to encourage a general induſtry muſt alſo be neceſſary for the ſupport of mankind; now without a property enſuing upon labour employed in occupying and cultivating things fitted for the ſupport of life, neither our ſelf-love, nor any of the tender affections, would excite men to induſtry; nay nor even the moſt extenſive benevolence toward all; ſince the common intereſt of all requires that all ſhould be obliged by their own neceſſities to ſome ſort of induſtry. Now no man would employ his labours unleſs he were aſſured of having the fruits of them at his own diſpoſal: otherwiſe, all the more active and diligent would be a perpetual prey, and a ſet of ſlaves, to the ſlothful and worthleſs.

Without thus enſuring to each one the fruits of his own labours with full power to diſpoſe of what is beyond his own conſumption to ſuch as are deareſt to him, there can be no agreeable life, no univerſal diligence and induſtry: but by ſuch inſurance labours become pleaſant and honourable, friendſhips are cultivated, and an intercourſe of kind offices among the good: nay even the lazy and ſlothful are forced by their own indigence, to bear their ſhare of labour. Nor could we hope, in any plan of polity, to find ſuch a conſtant care and fidelity in magiſtrates, as would compel all impartially to bear their proper ſhares of labour, and make a diſtribution of the common acquiſition in juſt proportion to the indigence or merits of the ſeveral citizens, without any partial regards to their favourites. And could even this be

obtained in fact, yet the citizens could ſcarce have ſuch confidence in their magiſtrates wiſdom and fidelity, as would make their diligence and labour ſo agreeable to them, as when they are themſelves to make the diſtribution of their profits, according to their own inclinations, among their friends or families.

CHAP. VI.

The METHODS *of* ACQUIRING PROPERTY.

PROPERTY is either *original* or *derived*. The original property ariſes from the firſt occupation of things formerly common. The derived is that which is transferred from the firſt Proprietors.

Whoſoever either from a deſire of preſerving himſelf, or profiting any who are dear to him, firſt occupies any of the ſpontaneous fruits of the earth, or things ready for human uſe on which no culture was employed, either by firſt diſcovering them with intention immediately to ſeize them, or by any act or labour of his catching or encloſing them ſo that they are more eaſily attainable and ſecured for human uſe, is deemed juſtly the proprietor for theſe reaſons; that if any other perſon, capable of ſubſiſting otherwiſe, would wreſt from him what he had thus acquired, and defeat and diſappoint his labours, he would plainly act inhumanly, break off all friendly ſociety, and oc-

caſion perpetual contention. What this perſon pretends to now, he may attempt anew every hour: and any other perſon may do the ſame with equal right: and thus all a man's pains in acquiring any thing may be defeated, and he be excluded from all enjoyment of any thing unleſs he perpetually defend his acquiſitions by violence.

It is trifling to imagine that property is any phyſical quality or bond between a man and certain goods, and thence to diſpute that there is no ſuch force or virtue in firſt eſpying, touching, ſtriking, or incloſing any thing, as to conſtitute a ſacred right of property; or to debate which of all theſe actions has the greateſt virtue or force. For in all our inquiries into the grounds or cauſes of property, this is the point in queſtion, "what cauſes or circumſtances ſhew, that "it is human and equitable toward individuals, and "requiſite alſo to the maintenance of amicable ſociety, that a certain perſon ſhould be allowed the full "uſe and diſpoſal of certain goods; and all others "excluded from it?" and when theſe are diſcovered, our road is cleared to find out the cauſes and rules about property.

II. THUS therefore we ſhould judge about the different methods of occupation: that it is inhuman and unjuſt, without the moſt urgent neceſſity, to obſtruct the innocent labours others have begun and perſiſt in, or by any ſpeedier attempt of ours to intercept their natural profits. If therefore any perſon in ſearch for things requiſite for himſelf, firſt diſcovers them with intention immediately to ſeize or purſue them; one who had employed no labour about them, nor was in ſearch for them, would act injuſtly and inhumanly, if by his greater ſwiftneſs he firſt ſeized them for himſelf. If ſeverals at once were ſearching for ſuch things, and at once diſcover them by ſight, they will be common among them, even although one ſwifter than the reſt firſt touched them; unleſs by civil laws or cuſtom ſuch points be otherwiſe determined. If one firſt eſpies them, and another conſcious of his

deſign, but alſo in ſearch for ſuch things for himſelf, firſt ſeizes them, the things will be common to both, or in joint property: for there are no more potent reaſons of humanity on one ſide than on the other. If one by his labour or ingenuity incloſes or enſnares any wild animals, or ſo wearies them out in the chaſe that they can now eaſily be taken; it is a plain wrong for another to intercept them, though the former had neither ſeen nor touched them. If it is known to many that certain lands or goods lie common to be occupied by any one; and ſeverals, not conſcious of each other's deſigns, at once are preparing to occupy them, and ſet about it: by the cuſtom which has obtained, he that firſt arrives at them is the proprietor. But, abſtracting from received cuſtoms and laws, ſuch things ſhould be common to all who without fraud or imprudent negligence employed their labours in occupying them, whether they came earlier or later; and ſhould either be held in common, or divided among them in proportion to the expence and pains prudently employed by each of them for this purpoſe. Nay though each of them were aware of the deſigns of the reſt; it is right that each ſhould proceed and acquire a joint title with others. Nor ſhould thoſe who without any fault of their own came too late, or ſuch whoſe wiſe and vigorous attempts have been retarded by accidents, be precluded from their ſhare.

In ſuch diſputable caſes we ſhould firſt inquire what reaſons of humanity give the preference to any one above the reſt; and this chiefly, "that the natural "fruits of no man's honourable or innocent labours "ſhould be intercepted; or any honeſt induſtrious at-"tempts defeated." If this plea belongs alike to all, the goods ſhould be deemed in joint property of all. If ſome accidents or circumſtances make the point very doubtful; and ſome ſorts of goods can neither be held in common, nor divided or ſold without great loſs; we ſhould follow ſome implicit conventions of men, appearing by the laws or cuſtoms which prevail; and aſſign the property to him who has on his ſide

ſuch circumſtances the regarding of which prevents many inextricable diſputes and violent contentions. Hence it is that law and cuſtom ſo generally favour the firſt ſeizer, the publick purchaſer, and the perſon to whom goods have been publickly delivered. And this conduces to the common utility.

If different perſons intending to occupy, agree that the whole ſhould fall to him who firſt occupies; they ought alſo to ſpecify the manner of occupation; otherwiſe different methods may be deemed equally valid, and conſtitute a joint property. Theſe rules ſeem the moſt conducive to peace.

No doubt inextricable queſtions may ariſe about what the ſeveral parties inſiſting on their utmoſt rights may do, without being chargeable with injuſtice. But ſuch as ſincerely aim at acting the virtuous part, will always eaſily diſcern what equity and humanity require, unleſs they are too much influenced by ſelfiſhneſs. Nor have we reaſon to complain, that, in theſe and ſuch like caſes, nature has not preciſely enough fixed the boundaries, to let us ſee how very near we may approach to fraud or injury, without actually incurring the charge of it; when we are ſo loudly exhorted to every thing honourable, liberal and beneficent.

III. BUT as man is naturally endued with provident forethought, we may not only juſtly occupy what is requiſite for preſent uſe, but may juſtly ſtore up for the future; unleſs others be in ſome extraordinary diſtreſs. There are alſo many things requiring a very long courſe of labour to cultivate them, which after they are cultivated yield almoſt a perpetual and copious uſe to mankind. Now that men may be invited to ſuch a long courſe of labour, it is abſolutely requiſite that a continual property be allowed them as the natural reſult and reward of ſuch laborious cultivation. This is the caſe in clearing woody grounds for tillage or paſture; preparing vineyards, oliveyards, gardens, orchards; in rearing or breaking of beaſts for labour.

Property is deemed to begin as ſoon as one begins the culture of what before was unoccupied; and it is compleated when the cultivator has marked out ſuch a portion as he both can and intends to cultivate, by himſelf or ſuch as he can procure to aſſiſt him; as it is plainly unjuſt to obſtruct any innocent labours intended, or to intercept their fruits.

But the abilities of the occupier with his aſſiſtants muſt ſet bounds to his right of occupation. One head of a family, by his firſt arriving with his domeſticks upon a vaſt iſland capable of ſupporting a thouſand families, muſt not pretend to property in the whole. He may acquire as much as there is any probability he can cultivate, but what is beyond this remains common. Nor can any ſtate, on account of its fleets firſt arriving on a vaſt continent, capable of holding ſeveral empires, and which its colonies can never ſufficiently occupy, claim to itſelf the dominion of the whole continent. This ſtate may juſtly claim as much as it can reaſonably hope to cultivate by its colonies in any reaſonable time: and may no doubt extend its bounds beyond what it can cultivate the firſt ten or twelve years; but not beyond all probable hopes of its ever being able to cultivate. The juſt reaſonable time to be allowed to the firſt occupiers, muſt be determined by prudent arbiters, who muſt regard, not only the circumſtances of this ſtate, but of all others who may be concerned, according as they are more or leſs populous, and either need new ſeats for their colonies, or have already ſufficient lands for their people. If many neighbouring ſtates are too populous, they may juſtly occupy the uncultivated parts of ſuch a new diſcovered continent, leaving ſufficient room for the firſt occupiers; and that without the leave of the firſt diſcoverers. Nor can the firſt diſcoverers juſtly demand that theſe colonies ſent by other ſtates ſhould be ſubjected to their empire. It is enough if they agree to live amicably beſide them as confederated ſtates. Nay as in a free democracy, it is often juſt to prevent ſuch immoderate acquiſitions of wealth

by a few, as may be dangerous to the publick, even though theſe acquiſitions are a making without any private injuries: ſo neighbouring ſtates may juſtly take early precautions, even by violence if neceſſary, againſt ſuch acquiſitions of any one, as may be dangerous to the liberty and independency of all around them; when ſufficient ſecurity cannot be obtained in a gentler way. Nothing can be more oppoſite to the general good of mankind than that the rights, independency, and liberty of many neighbouring nations ſhould be expoſed to be trampled upon by the pride, luxury, ambition, or avarice of any nation.

It is plain however, that both individuals and ſocieties ſhould be allowed to acquire ſtores of certain goods far beyond all their own conſumption; ſince theſe ſtores may ſerve as matter of commerce and barter to obtain goods of other kinds they may need.

IV. FROM theſe principles about property it appears, that ſuch things as are inexhauſtible by any uſe, are not matters of occupation or property, ſo that others could be excluded from them: for this further reaſon too, that ſuch things can ſcarce be improved by any human labour. If indeed for the more ſafe uſe of any of them labour or expences are requiſite; thoſe who wiſely employ labour or expence for this purpoſe, may juſtly require that all others who uſe them ſhould in a juſt proportion contribute to make compenſation. The *air*, the *light*, *running water*, and *the ocean* are thus common to all, and cannot be appropriated: the ſame is the caſe of *ſtraits* or *gulfs*. And yet if any ſtate is at the expence to build fortified harbours, or to clear certain ſeas from Pirates for the behoof of all traders, they may juſtly inſiſt on ſuch taxes upon all traders who ſhare the benefit as may proportionally defray the ſaid expences, as far as they really are for the benefit of all traders, but no further. Now no man ſhould be excluded from any uſe of things thus deſtined for perpetual community, unleſs this uſe requires alſo ſome uſe of lands which are in property.

Theſe reaſonings alſo ſhew that all things were left by God to men in that community called *negative*, not *poſitive*. *Negative community* is "the ſtate of things "expoſed to be appropriated by occupation." *Poſitive community* is "the ſtate of things in the joint "property of many:" which therefore no perſon can occupy or acquire without the conſent of the joint proprietors. At firſt any one might juſtly have occupied what he wanted, without conſulting the reſt of mankind; nor need we have recourſe to any old conventions of all men, to explain the introduction of property.

V. THE goods called by the Civilians *res nullius*, which, as they ſay, are not in property, and yet not expoſed to occupation *, ſuch as temples, the fortifications of cities, and burial places, are truly the property either of larger ſocieties, or of families; although this property is often ſo reſtricted by ſuperſtitious laws, that it can be turned to no other uſe. It is in vain to imagine that any ſuch things afford uſe to the Deity, or that his ſupreme right over all can be enlarged or diminiſhed by any human deed.

The goods belonging to ſtates † are not in the property or patrimony of any individuals, nor come into their commerce. But they are the property of the community, which may transfer them as it pleaſes. Such are publick theatres, highways, porticos, aqueducts, bagnios.

Things formerly occupied may return into the old ſtate of community if the proprietor throw them away, or abandon his property; and this intention of abandoning may ſometimes ſufficiently appear by a long neglect of claiming it, when there is nothing to obſtruct his recovery. A long poſſeſſion in this caſe will give another a juſt title. Goods unwillingly loſt fall alſo to the fair poſſeſſor, when the proprietor cannot

* Of theſe there are three claſſes, *ſacræ*, *ſanctæ*, *religioſæ*. Of which follow three examples in order.

† *Res publicæ*, or *res populi*.

be found. There are alſo other reaſons why civil laws have introduced other ſorts of *preſcription* * for the common utility, and to prevent inextricable controverſies.

In the occupying of lands, a property is alſo conſtituted in ſuch things as cannot be uſed without ſome uſe of the ground; ſuch as lakes, and rivers as far as they flow within the lands in property; nay ſuch parts alſo of things otherwiſe fit for perpetual community, as cannot be left open to promiſcuous uſe without endangering our property; ſuch as *bays* of the ſea running far into our lands, and parts of the ocean contiguous to the coaſt, from whence our poſſeſſions might be annoyed. But by occupying lands we acquire no property in ſuch wild creatures as can eaſily withdraw themſelves beyond our bounds, and are no way incloſed or ſecured by our labour. And yet the proprietor may juſtly hinder others from treſpaſſing upon his ground for fowling, hunting, or fiſhing.

All natural, accidental, or artificial improvements, or adventitious increaſe, are called acceſſions, ſuch as fruits of trees, the young of cattle, growth of timber, and artificial forms. ‡ About which theſe general rules hold, 1. "All acceſſions of our goods which "are not owing to any goods or labours of others, "are alſo our property; unleſs ſome other perſon has "acquired ſome right which limits our property."

2. When without the fraud or fault of any of the parties, the goods or labours of different perſons have concurred to make any *compound*, or have improved any goods, "theſe goods are in joint property of all "thoſe whoſe goods and labours have thus concurred; "and that in proportion to what each one has con-"tributed." Such goods therefore are to be uſed by them in common, or by turns for times in the ſaid

* *Uſucapio.*

‡ *Fructus, incrementa, alluviones, commixtiones, confuſiones, ſpecificationes.* The explication of all theſe may be found in any compend of civil law, or law dictionary.

proportion, or to be thus divided among them, if they will admit diviſion without loſs.

3. But if they admit no ſuch common or alternate uſe, or diviſion, they to whom they are leaſt neceſſary ſhould quit their ſhares to the perſon who needs them moſt, for a reaſonable compenſation, to be eſtimated by a perſon of judgment and integrity.

4. When by the fraud or groſs fault of another, his goods or labours are intermixed with my goods, ſo that they are leſs fitted for my purpoſe; the perſons by whoſe groſs fault this has happened is bound to compenſate my loſs * or make good to me the value of my goods, nay, ‡ all the profit I could have made had they been left to me entire as they were; and let him keep to himſelf the goods he has made unfit for my purpoſe. But if by the intermeddling of others my goods are made more convenient for me, my right remains; and I can be obliged to compenſate to them no further than the value of the improvement to my purpoſes, or as far as I am enriched.

Full property originally contains theſe ſeveral rights; firſt, that of retaining poſſeſſion. 2. And next, that of taking all manner of uſe. 3. That alſo of excluding others from any uſe. 4. And laſtly, that of transferring to others as the proprietor pleaſes, either in whole or in part, abſolutely, or under any lawful condition, or upon any event or contingency, and of granting any particular lawful uſe to others. But property is frequently limited by civil laws, and frequently by the deeds of ſome former proprietors.

* This *penſatio damni*, which is often due when there was no fraud in the caſe.

‡ *Penſare quod intereſt*, which always includes the former, and often extends much further.

CHAP. VII.

Of DERIVED PROPERTY.

THE derived rights are either *real* or *perſonal*. The materials whence all real rights ariſe is our property. Perſonal rights are founded on our natural liberty, or right of acting as we chooſe, and of managing our own affairs. When any part of theſe original rights is transferred to another, then a perſonal right is conſtituted.

To apprehend this diſtinction, which has place in the law of nature, as well as in civil law, it is to be obſerved, that the common intereſt of all conſtantly requires an intercourſe of offices, and the joint labours of many: and that when mankind grow numerous, all neceſſaries and conveniencies will be much better ſupplied to all, when each one chooſes an art to himſelf, by practice acquires dexterity in it, and thus provides himſelf great plenty of ſuch goods as that art produces, to be exchanged in commerce for the goods produced in like manner by other artiſans; than if each one by turns practiſed every neceſſary art, without ever acquiring dexterity in any of them.

It is plain too, that when men were multiplied conſiderably, all lands of eaſy culture muſt ſoon have been occupied, ſo that there would none remain in common; and that many could find none to occupy for their ſupport, ſuch perſons therefore would have no other fund than their own bodily ſtrength or ingenuity, that by their common or artificial labours they might procure neceſſaries for themſelves: the more opulent too, for their own eaſe, would more

frequently need the labours of the indigent, and could not with any conſcience expect them gratuitouſly. There muſt therefore be a continual courſe of contracts among men, both for the transferring of property or real rights; and the conſtituting claims to certain ſervices, and to certain quantities or values, to be paid in conſideration of theſe ſervices; which are perſonal rights.

Now it would often happen that a proprietor without entirely transferring his property in lands or other goods, would yet conſent ſo to ſubject them to certain claims of his creditor, that unleſs the debt be diſcharged at the time agreed, the creditor by the poſſeſſion or ſale of ſuch lands or goods might ſecure himſelf: by a tranſaction of this kind a *real right* is conſtituted. Sometimes the creditor would have ſuch confidence in the wealth and integrity of his debtor, that he would demand no ſuch *real* ſecurity as a pledge or mortgage, but accept of a perſonal obligation, which had no more peculiar reſpect to any one piece of goods or property of the debtor than another. In like manner; from any damage done there would ariſe only a *perſonal right*. But further, when it was found abſolutely neceſſary to maintain the faith of commerce, certain publick and notour forms have been received, to make full tranſlation of property: which muſt have always been deemed ſo valid and ſacred, that no prior latent contracts with others could defeat them. Were not ſuch *forms* thus agreed upon, no man would buy any thing; ſince he could have no ſecurity that it would not be wreſted from him by a third perſon upon ſome prior latent contract. A good man no doubt will ſacredly regard all his contracts and obligations perſonal or real; and avoid what may defeat any right of another of any kind. But there is ſuch a neceſſity of maintaining the faith of publick commerce *, that

* Whatever may be determined by human laws or courts, there is no natural foundation in juſtice for preferring the pledge or mortgage as to any loans made after he knew the debts due to others, and ſuſpected that they were in danger of loſing them.

all contracts entered into publickly and without fraud, in order to transfer real right, muſt take place of latent contracts and perſonal rights, tho' prior in time.

II. DERIVED real rights are either certain parts of the right of property, ſubſiſting ſeparately from the reſt; or compleat property transferred. The parts which often ſubſiſt ſeparately are four, *the rights of poſſeſſing* what one obtains without force or fraud; the *rights of heirs entail*; the rights of the *pledge* or *mortgage*; and *ſervitudes*.

He that poſſeſſes the goods of another without fraud or violence, either knows that they are the property of others, or upon probable ground believes them to be his own. And this latter is the *bonae fidei poſſeſſor*, or the preſumptive proprietor.

Whoſoever by fraud or violence poſſeſſes the goods he knows belong to others, has no manner of right. The proprietor, or any other honeſt man for the proprietor's behoof, has a right to demand and take them from him by force, to reſtore them to the proprietor. But when we get poſſeſſion of any goods without fraud or violence, which we know belong to others, (as when one finds goods loſt at land, or wrecks at ſea), theſe we may detain till they are claimed by the proprietor, or ſome perſon commiſſioned by him; and if no ſuch perſon ever appears, the goods fall to the poſſeſſor. But in ſuch caſes the poſſeſſor is bound to give publick notice that he has found ſuch goods, and is ready to reſtore them to the owner: to conceal them would be equal to theft. But he may juſtly inſiſt to have all his prudent charges in the keeping or advertiſing them refunded to him.

The obligations on the preſumptive proprietor are, firſt to reſtore to the owner the goods, with all their unconſumed fruits, profits and increaſe.

2. If the goods or their increaſe be conſumed, to refund to the value of what he is inriched by the uſe of them, in ſparing ſo much of his own property; or ſo much as it can be deemed valuable to him to

have ſo long lived with more elegance or pleaſure, conſidering his circumſtances. For 'tis a juſt maxim, that "no perſon ſhould derive to himſelf any "pleaſure or advantage at the expence of another "without his conſent."

3. If both the goods and their increaſe have periſhed by accident, the preſumptive proprietor who holds no profit by them is not obliged to make good the value: nor is he accountable for ſuch profits as he neglected to take: for he uſed theſe goods believing them to be his own, even as he would have uſed his own. But one ceaſes to be preſumptive proprietor as ſoon as he has any probable intimation that the goods are not his own, by any plauſible claim put in by another: and whatever is culpably loſt, ſquandered or groſsly neglected thereafter he is bound to make good.

4. When the preſumptive proprietor reſtores to the true owner any goods he bought or obtained for valuable conſideration, he may juſtly inſiſt to have the price or conſideration reſtored to him by his *author*, or the perſon from whom he obtained them.

5. Where this perſon is bankrupt, or can't be found, the cauſe of the preſumptive proprietor is as favourable as that of the true one: Nor does the true proprietor hold by any title more ſacred than by purchaſe, ſucceſſion, teſtament, or donation, which are the ordinary foundations of the true property, as well as of the preſumptive. And ſince a certain loſs muſt fall upon one or both parties, nor is there any reaſon of publick intereſt pleading for one more than the other: the loſs ſhould be equally divided between them, unleſs ſome reaſons of humanity recommend a different deciſion; eſpecially ſince it often happens that the preſumptive proprietor has done a moſt valuable ſervice to the proprietor, in purchaſing his goods, which otherwiſe might have been loſt to him for ever. If one pleads the general advantage of making purchaſers look well to their titles, that they may not purchaſe

goods injuriouſly obtained: 'tis on the other hand an equal publick advantage that the proprietors be made more vigilant about their goods, leaſt when they are loſt or ſtollen through their negligence, fair purchaſers may be involved in loſſes by their means.

6. Where the preſumptive property has been obtained gratuitouſly, and the goods are claimed by the true owner, they muſt be reſtored. Nor has the perſon who got them gratuitouſly in this caſe any recourſe for their value.

III. CONCERNING the right of heirs entail, theſe points ſeem clear, that one who has full property may transfer his goods to any perſon upon any contingency, or under any lawful conditions. The right therefore of perſons in remainder is as ſacred as any right founded in donation: nor is it leſs inhuman to hinder the proprietor to convey his property to a perſon dear to him, upon any contingency, than to hinder a friendly immediate donation, or conveyance to his firſt heir upon the event of his death. It is no leſs inhuman to defeat the hopes of the ſecond or third in remainder, without any demerit of theirs, than to intercept other donations to friends. And yet there may be prudent reaſons why civil laws ſhould prevent making ſuch perpetual entails as may be very inconvenient to the ſeveral ſucceſſors in their turns, or pernicious to the community; even as counts of equity often make void prodigal and inconſiderate donations.

IV. FOR further ſecurity to creditors pledges and mortgages were introduced, or goods ſo ſubjected to the power of the creditor * that, if the debt is not diſcharged at the time prefixed, the goods ſhould become the property of the creditor. In this there would be no iniquity, if the creditor in ſuch caſes were alſo obliged to reſtore to the debtor whatever ſurplus of value there was, upon a juſt eſtimation of

* This clauſe is called *lex commiſſoria*, or the clauſe of entire forfeiture.

the goods, beyond the ſum of the debt. * Where ſuch real ſecurity is given, it takes place of all prior debts, which have not been publickly intimated before the mortgage. Nor can prior creditors juſtly complain: let them blame themſelves that they inſiſted not on higher ſecurity, and thus are poſtponed to creditors who uſing more caution inſiſted on higher, and who had no notice of their prior claims.

V. THE laſt claſs of real rights are *ſervitudes*, that is, "rights to ſome ſmall uſe of the property of "others;" which generally ariſe from contracts: or from this, that in the transferring of property they have been reſerved by the granter, or ſometimes from civil laws. All ſervitudes are real rights, terminating upon ſome definite tenement. And yet with regard to the *ſubject* they belong to, and not the object they terminate upon, they are divided into *real* and *perſonal*. The *perſonal* are conſtituted in favour of ſome perſon, and expire along with him: the real are conſtituted for the advantage of ſome tenement, and belong to whatever perſon poſſeſſes it. † An inſtance of the former is tenantry for life impeachable for waſte. The real ſervitudes are either upon *town-tenements*, or *farms* in the country. Inſtances of the former are the rights of putting beams or rafters into a neighbouring gable or wall; a right that our windows ſhall not be obſtructed by any building in the adjacent tenement, and ſuch like. The rural ſervitudes are chiefly that of roads for paſſage or carriages, or of little channels for rivulets, brought through a neighbouring farm.

* Here no mention is made of the difference between the *pignus* and *hypotheca* as in the original. Our words *pledge* and *mortgage* don't fully expreſs it. *Pignus* is like a mortgage with poſſeſſion, and *hypotheca* one without poſſeſſion, whether of lands or moveables.

† The ſeveral ſervitudes mentioned in the original could not have been explained to an Engliſh reader without a very tedious and uſeleſs diſcuſſion, as the Roman ſervitudes differed much from ours. They are found in every compend of the civil law.

CHAP. VIII.

The METHODS *of* TRANSFERRING PROPERTY CONTRACTS, SUCCESSION, TESTAMENTS.

PROPERTY may be transferred, either by the *voluntary deed* of the former proprietor, or without any deed of his, by *appointment of law* either natural or civil: and in each of theſe ways it is transferred either *among the living*, or upon *the event of death*.

By the deed of the proprietor among the living, property is transferred either *gratuitouſly* in donations, or for *valuable conſideration* in commerce, wherein a price, or goods of equal value, or rights, are transferred in conſideration of it. This power of alienating, we formerly ſhewed, is included in the right of property. We treat of contracts and commerce hereafter.

II. By the deed of the proprietor upon the event of death property is transferred in *teſtaments* or *laſt-wills*. According to the law of nature, "any declaration of a man's will how his goods ſhould be diſpoſed of upon the event of his death," is a valid teſtament, provided there be ſufficient documents or proof made of this will. For that of which no proof can be made muſt be deemed as if it were not.

The nature of property itſelf and the known intention of mankind in their acquiring goods beyond their own uſe, that they may contribute to the happineſs of ſuch as are deareſt to them, ſhew that the wills of the deceaſed which contain nothing iniquitous ſhould be obſerved. 'Tis cruel and inhuman, and deſtructive to induſtry, to hinder men to tranſfer as they incline what they have acquired by their innocent labours, and that upon any contingency. It would be diſagreeable and often highly inconvenient to oblige men while they are living, and

perhaps in good health, to make irrevocable conveyances of their property to their kinſmen: It would alſo be cruel to deprive the dying of this ſatisfaction that their acquiſitions ſhould be of advantage to their friends: it would be inhuman toward the ſurviving friends, the heirs or legatees, to fruſtrate or intercept the kindneſſes intended them by the deceaſed: Without regard therefore to the metaphyſical ſubtilities of ſuch as object, that *'tis abſurd men ſhould then be deemed to will and act when they become incapable of will or action*, we conclude that the law of nature grants this power of diſpoſing by will.

But as many obligations both of a perfect kind and ſuch as are pretty near of equal ſanctity, muſt be diſcharged out of our goods, all juſt debts muſt be paid, our children or indigent parents maintained: wills are therefore juſtly made void as far as they interfere with theſe obligations. Nay tho' there were no ſurviving parents or children, 'tis reaſonable that other near indigent kinſmen, who have given no juſt cauſe for their being thus neglected, ſhould be admitted to certain ſhares of the fortune of the deceaſed, even contrary to an inhuman capricious will. The law of nature too as well as civil laws invalidate any thing in wills which may be detrimental to the community; and enjoin that wills be made with ſuch ſolemn forms and circumſtances as may be neceſſary to prevent forgeries: and, where theſe forms are omitted without neceſſity, deems the will to be void.

III. PROPERTY is transferred *among the living*, even againſt the will of the proprietor, by appointment of law, for the performance of whatever the proprietor was ſtrictly bound to perform, and yet declined. This branch will be more fully explained when we treat of contracts, and the rights ariſing from damage done either injuriouſly or without a crime, and the manner of proſecuting our juſt rights *.

* Chap. xv. of this book.

Upon *the event of death*, without any deed of the proprietor, property is transferred *by the law* in the *ſucceſſions to the inteſtate*. The natural grounds of which are theſe: 'tis well known that the intention of almoſt all mens acquiſitions beyond their own uſe, is to profit thoſe whom they love. This univerſally known intention of mankind is a continual declaration of their will: now according to the general temper of mankind, our children and near kinſmen are deareſt to us, and 'tis for them we univerſally endeavour to obtain not only the neceſſary ſupports, but even the pleaſures and ornaments of life. Nay God and nature, by making theſe ties of blood bonds alſo of love and good-will, ſeems to have given our children and kinſmen if not a perfect claim or right, yet at leaſt one very near to perfect, to obtain not only to the neceſſary ſupports, but even the conveniences of life from their wealthy parents or kinſmen, unleſs they have forfeited it by their vitious behaviour. 'Tis therefore cruel to deprive men of this general conſolation upon the event of ſudden death, againſt which no man can take certain precautions, that the fruits of their induſtry ſhall fall to their children or kinſmen. And 'tis plainly cruel and unjuſt to defeat theſe rights of children and kinſmen which God and nature have given them.

Nay where the cuſtom has prevailed of admitting kinſmen and children to ſucceed, 'tis juſtly preſumed that this was the very intention of the deceaſed. And this right of ſucceſſion has the ſame foundation in juſtice with teſtaments.

Where there are no children or very near relations, like arguments of humanity would plead for friends, if it were known that any ſuch had been ſingularly dear to the deceaſed. But where by cuſtom or law the remoteſt kinſmen are preferred to friends, 'tis preſumable that this was the intention of the perſon deceaſed, unleſs proof can be made of his hatred to his kinſmen. The cauſes of this law

or cuſtom prevailing every where, are theſe; that 'tis eaſy to compute the degrees of kindred, but impoſſible thoſe of friendſhip; and that we frequently ſee that men who ſeemed moſt to delight in the company of friends and not of kinſmen, yet when they declare their own will about their goods, they leave them almoſt always to kinſmen.

Kinſmen ſhould ſucceed according to their proximity, thoſe of equal degrees equally. Firſt our children, among whom grandchildren by a child deceaſed, ſhould be admitted, at leaſt to the ſhare their parents would have had: nay ſometimes humanity would appoint them a greater ſhare, where many ſuch orphans are in ſtraits. Along with children, ſome ſhare is due to indigent parents, at leaſt as to the neceſſaries of life; nay brothers in diſtreſs ſhould have ſome ſhare. When there are no children or parents ſurviving, brothers and ſiſters, with the children of any ſuch deceaſed, at leaſt for their parents ſhare, ſhould be admitted: and when none ſuch ſurvive, couſin-germans by brothers or ſiſters, and their poſterity.

IV. THE conſtitution and civil laws and cuſtoms of ſome ſtates may require that a far larger ſhare of the goods of perſons deceaſed ſhould go to the ſons or other heirs male, than what goes to daughters, or to females in the ſame degrees with the males, and to the eldeſt of males beyond what goes to the younger. And yet there can ſcarce be any reaſon for that vaſt difference made on theſe accounts in many nations. The law of nature ſcarce makes any difference among perſons in equal degrees on account of ſex or ſeniority: nor does it eſtabliſh the lineal ſucceſſion, where ſome one muſt always as it were ſuſtain the perſon of the deceaſed, and ſucceed to his real eſtate. This ſucceſſion is wholly a † human contrivance, and often abſurd and iniquitous. In the firſt degree all other differences

† This lineal ſucceſſion to private fortunes has manifeſtly been introduced by the Feudal laws of the *Lombards*.

yield to that of the ſex. But in the ſecond and remoter degrees, both the pre-eminence of ſex in the ſucceſſors themſelves and ſeniority, give place to the pre-eminence of ſex and the ſeniority of the deceaſed parent; ſo that an infant grand-daughter or great grand-daughter by an eldeſt ſon deceaſed takes place of a grandſon of mature years and wiſdom by a ſecond ſon, nay of the ſecond ſon himſelf. And the like happens among nephews and nieces and their children, in ſucceeding to the fortunes of their uncles: and in the ſucceſſions of couſin-germain or more remote.

CHAP. IX.

Of CONTRACTS *in* GENERAL.

SINCE a perpetual commerce and mutual aids are abſolutely neceſſary for the ſubſiſtence of mankind, not to ſpeak of the conveniencies of life, God has indued men not only with reaſon but the powers of ſpeech, by which we can make known to others our ſentiments, deſires, affections, deſigns, and purpoſes. For the right uſe of this faculty we have alſo a ſublime ſenſe implanted, naturally ſtrengthened by our keen deſires of knowledge, by which we naturally approve veracity, ſincerity, and fidelity; and hate falſhood, diſſimulation, and deceit. Veracity and faith in our engagements, beſide their own immediate beauty thus approved, recommend themſelves to the approbation and choice of every wiſe and honeſt man by their manifeſt neceſſity for the common intereſt and ſafety; as lies and falſhood are manifeſtly deſtructive in ſociety.

In an intercourſe of ſervices, in commerce, and in joint labour, our ſentiments, inclinations and de-

ſigns muſt be mutually made known: and "when "we affirm to others that we will pay or perform "any thing, with that profeſſed view, that another "ſhall pay or perform ſomething on his part" then we are ſaid to promiſe or contract. A covenant or contract is the "conſent of two or more to certain "terms, with a view to conſtitute or aboliſh ſome "obligation." Nor does the law of nature diſtinguiſh between * *contracts* and *pactions*.

Contracts are of abſolute neceſſity in life, and ſo is the maintaining of faith in them. The moſt wealthy muſt need the goods and labours of the poor, nor ought they to expect them gratuitouſly. There muſt be conferences and bargains about them, that the parties may agree about their mutual performances. Suppoſe all men as juſt and good as one could deſire, nay ready for all kind offices: yet without contracts no man can depend upon the aſſiſtance of others. For when I need the aid of a neighbour, he may be engaged in ſome more important ſervices to a third perſon, or in ſome ſervices to thoſe who can give him a recompenſe more requiſite in his affairs.

The ſacred obligation of faith in contracts appears, not only from our immediate ſenſe of its beauty, and of the deformity of the contrary, but from the miſchiefs which muſt enſue upon violating it. 'Tis plainly more contrary to the ſocial nature, and frequently a baſer injury, to break our faith, than in other equal circumſtances to have omitted or declined a duty we owe another way. By violating our faith we may quite defeat the deſigns of ſuch as truſted to our integrity, and might have otherwiſe obtained the aid they wanted: and, from the neceſſity of commerce, it muſt appear, that the rights founded on contracts are of the *perfect* ſort, to be purſued even by force. The perfidious for his part breaks off all ſocial commerce among men.

* The difference between *contractus* and *pactum* is found in any Civil-law-dictionary.

II. AND further; tho' a good man would not take any advantage of another's weakneſs or ignorance in his dealings, nay would frequently free another from a bargain which proved highly inconvenient to him, and not very neceſſary to himſelf, provided any loſs he ſuſtained were made good; yet there's ſuch a manifeſt neceſſity of maintaining faith in commerce, and of excluding the cavils which might be made from ſome ſmaller inconveniences to one or other of the parties, that in the proper matters of commerce, the adminiſtration of which the law of nature commits to human prudence, our covenants tho' raſhly made muſt be valid, and conſtitute at leaſt ſuch external rights to others, as muſt for the common utility be maintained, tho' perhaps a good man would not inſiſt on them. But if the perſon who claims them perſiſts in his claim to the utmoſt, we can have no right to oppoſe him violently, but ought to obſerve our covenants; according to an old rule, that "what "ought not to have been done is obligatory."

The proper *matters of commerce* are our labours and goods, or in general all ſuch things as muſt be frequently interchanged among men for the intereſt of ſociety; and by a commerce in which we neither directly violate that pious reverence due to God, nor the perfect right of another; and about which no ſpecial law of God deprives us of the right of tranſacting.

III. WE muſt diſtinguiſh from contracts *the bare declarations of our future intentions*; which neither transfer any right to others nor bind us to continue in the ſame purpoſe. What comes nearer to contracts are theſe *imperfect promiſes*, in which from cuſtom 'tis underſtood that we convey no right to others to oblige us to performance, but only bind ourſelves in honour and veracity; and that too only upon condition that the perſon to whom we make ſuch promiſes ſo behave as to be worthy of the favour deſigned him, and don't by his bad conduct

give us juſt cauſe of altering our intentions: and in this point the promiſer reſerves to himſelf the right of judging: nor does he bring himſelf under an higher perfect obligation, than that of compenſating any loſs the other may ſuſtain, even tho' he ſhould without cauſe alter his purpoſe.

IV. THE circumſtances to be conſidered in explaining the nature of contracts and the juſt exceptions againſt the obligation, relate either to the *underſtanding*, or the *will*, the two internal principles of action, or the *matter* about which they are made.

As to the *underſtanding*; the common intereſt, as well as humanity, requires, that no perſon ſhould ſuſtain any damage on account of any ignorance in his own affairs which is no way faulty. And hence the contracts of minors unacquainted with the nature of the buſineſs, are not obligatory; nor of thoſe ſeized with madneſs or dotage, nor of ideots, nor even of men quite diſordered by drunkenneſs ſo as to have loſt the uſe of their reaſon. And altho' there may be a great crime in drunkenneſs which may juſtly be puniſhed; yet this is no reaſon why the fraudulent and covetous ſhould be allowed to make a prey of them. The caſe is very different as to crimes or injuries done by men intoxicated. For tho' we are not bound with reſpect to others to preſerve ourſelves always in a condition fit for tranſacting buſineſs, yet we are bound to preſerve ourſelves innocent continually, and to avoid doing injuries. If one of the parties was not aware that the other was intoxicated; this latter will be bound to make good any loſs the other ſuſtained by his nonperformance of the contract. But there are many degrees of intoxication, ſome of which, tho' they may abate our caution and prudence, yet do not deprive us of the neceſſary uſe of reaſon. If all theſe degrees alſo made contracts void, there could be no ſure tranſactions among men. Queſtions concerning theſe degrees, muſt be decided in the ſeveral caſes by the judgment of prudent arbitrators.

The ſame might be ſaid concerning the imprudence of youth, previous to civil laws; ſince the degree of prudence requiſite for commerce appears in different perſons at very different ages. That therefore commerce may be aſcertained, and ſuch endleſs evaſions prevented, 'tis abſolutely neceſſary that in every ſociety ſome certain age be agreed upon, to which whoſoever attains muſt be deemed his own maſter, and capable of managing his own buſineſs. This age muſt be determined with this view, that as few as poſſible of ripe judgment be excluded from the adminiſtration of their own affairs, and yet as few as poſſible admitted before the maturity of judgment. The medium fixed by the Roman law is as good as any; that minors before fourteen years of age in males, and twelve in females, ſhould have no management of their affairs, but be under the natural guardianſhip of their parents; or, if they are dead, under that of the guardians their parents or the law has appointed; and after theſe years, till twenty-one, or as it was in their earlier times, till twenty-five, they ſhould be ſo ſubjected to curators, that no deed of theirs intended to bind themſelves or their fortunes, ſhould be deemed valid without the conſent of their curators.

'Tis on one hand unjuſt that minors ſhould ſuſtain loſſes in contracts; but 'tis on the other hand unjuſt that they ſhould be enriched at the expence of others, If therefore any contract has been made with them, and ſomething paid or performed by the other party, if it is not detrimental to them to confirm the contract, they ought to do it when they come to maturity: if it be found detrimental, they ſhould reſtore or compenſate what was received on that account, or as far as they were profited. Minors before the legal years often have ſufficient judgment in certain matters: and when it is ſo, nor was there any thing fraudulent or faulty on the other ſide, they are bound before God and their

own conſciences by their contracts, even as the adult.

When parents or curators are at hand, one can ſcarce without a groſs fault enter into any important contracts with a minor without their conſent. As generally the paſſions of the young are impetuous and incautious: they are raſh in promiſing, keen in their deſires, improvident, liberal, full of hopes and void of all ſuſpicion.

V. HE who was engaged into a contract by any miſtake or error about the very nature of the object or goods, or theſe qualities which are chiefly regarded in them, is not bound: and whatever he has paid on that account ſhould be reſtored. But no man has this plea who was engaged only by a ſecret expectation of ſuch qualities as he did not openly inſiſt on, or of ſuch as are not commonly expected in ſuch goods. If the miſtake was about ſome different matter or event, which moved him to the bargain; when the miſtake is diſcovered, humanity may require it of the other party to ſet him free, eſpecially if he is ready to compenſate any damage occaſioned by his miſtake. But this is not a matter of perfect obligation, unleſs the perſon in the miſtake made it an expreſs condition of the bargain.

The nature of the goods, and the qualities upon which their value depends, and the defects of ſuch qualities, are, as they ſpeak, *eſſential points* in contracts. Where one of the parties has been in a miſtake about them he is not bound. Where the miſtake has been only about the current price; the perſon deceived and ſuſtained the loſs has a perfect right to have the price reduced to quality; which if the other party refuſes the bargain may be made void.

Whoever by any fault or raſhneſs of his cauſed the miſtake of the other party, or fell into a miſtake himſelf, is bound to compenſate any loſs the other thereby ſuſtains; but he that dealt fraudu-

lently, is bound further to make good any profit the other could have made, had the bargain been executed with integrity*.

Any promiſes or contracts obtained from us by the fraud of the perſon with whom we contracted are plainly void; becauſe through his fraud we wanted the due knowledge requiſite in contracting, and he is bound to compenſate our damage occaſioned by his fraud, which is eaſieſt done by making the bargain void.

Where the fraud of a third perſon has moved us to a contract without any colluſion with the other party; the bargain is valid. But we have a right of demanding compenſation of any loſs from that third perſon who deceived us.

VI. WE always deem that all ſuch voluntarily conſent who voluntarily uſe ſuch ſigns of conſenting as by cuſtom import it. Nor could there be any faith maintained, if we allowed exceptions from a ſecret diſſent contrary to our expreſſions.

Words and writing are the fitteſt method of declaring conſent: but any other ſign agreed upon by the parties, or received by common cuſtom is ſufficient, Nay ſome actions in certain circumſtances are juſtly deemed to declare conſent, when they are ſuch as no man of common ſenſe or equity would do, unleſs he alſo conſented to certain terms. From ſuch actions therefore we juſtly conclude a perſon's conſent, unleſs he timouſly premoniſh all concerned of the contrary. Covenants or contracts founded on conſent, thus declared are called *tacit:* which are diſtinguiſhed from another ſet of obligations, to be preſently explained, ſaid to ariſe † *after the manner of contracts*, by this, that in tacit contracts

* The Civilians thus diſtinguiſh between *penſare damnum*, and *præſtare quod intereſt:* obliging thoſe who wrong others through negligence or inadvertence to the former only, but in caſ of fraud or more groſs negligence obliging always to the latter.

† Chap. xiv.

the obligation is prevented by an expreſs declaration to the contrary; but not in the others.

Beſide the principal expreſſed articles in contracts, there are frequently others plainly underſtood as adjected from the very nature of the tranſaction, or from the prevailing cuſtom among all who are engaged in ſuch buſineſs.

The conſent of both parties, of the receiver as well as the giver, is neceſſary in all tranſlation either of property or any other rights, whether gratuitous or not. For from one's intention of beſtowing any thing on a friend, we cannot conclude any deſign of throwing it away in caſe he don't accept, or of forcing it upon him. But a lower ſort of evidence will ſerve to prove a conſent to accept any thing valuable; and we may always preſume upon it, if the thing was previouſly requeſted; provided the offer anſwer the requeſt.

But as in full property there's included a right of diſpoſing under any lawful conditions, or upon any contingency; and of giving in truſt to a friend, till ſome future event happens: inheritances and legacies may thus be left with truſtees, till it be found whether the heirs deſigned, or the legatees are willing to accept. Nay goods may thus be kept in favours of perſons not yet exiſting; as it is unjuſt to hinder the proprietor to appoint his goods thus to be reſerved for the offſpring of his friends if they ſhall happen to have any: and 'tis injurious towards ſuch offſpring to have defeated or intercepted any benefits deſtined for them by their deceaſed parents, kinſmen, or friends. And yet no heir or legatee can be forced to be proprietor of any thing thus left to him without his own conſent. Mankind however, and each one as he has opportunity, when no ſpecial truſtee is appointed, ought to take this care of infants, or perſons unborn, to preſerve ſuch inheritances or legacies for their behoof, till they can accept them.

VII. As the obligation of contracts plainly depends on the conſent of the parties, and without it is void; ſo when it was only given under certain conditions, if they don't exiſt, there's no obligation. But ſuch conditions muſt be known as ſuch on both ſides, otherways there could be no faith in our tranſactions. Theſe conditions therefore alone are of ſuch force as that their non-exiſtence makes the tranſaction void, which were either expreſsly made conditions by one or other of the parties, or which the perſon who inſiſts on them did in conſcience believe the other party underſtood as adjected from the nature of the affair: and not every one which one of the parties might ſecretly expect would exiſt, tho' the like is not ordinarily expected in ſuch tranſactions. Whatever indeed one party has undertaken for to the other, or poſitively affirmed to him to engage him to the bargain, *that* the other party may juſtly be deemed to have made a condition of his conſenting.

In the known diviſion of contracts into *abſolute* and *conditional*, by a condition is underſtood "ſome "event yet uncertain to one or both the parties, "diſtinct from the preſtations covenanted, upon "the exiſtence of which the validity of the con-"tract depends." A condition known to be naturally impoſſible, ſhews that there's no engagement. We ſhall preſently ſpeak of another ſort of impoſſibility from the prohibition of law, or moral turpitude. But a vitious action of any third perſon, to be done without any aid of the parties contracting, may be a juſt condition; provided nothing in the contract give any invitation to ſuch actions.

Conditions in the power of either party are called *voluntary*; others are *involuntary*; and ſome are of a mixed nature. But neither ſide is underſtood to be obliged to make theſe conditions called voluntary or mixed to exiſt, * for then they would be abſolute covenants of the bargain.

* A voluntary condition is of this ſort: "If I ſhall retire to "live in the country, I agree to ſet my city-houſe at ſuch a

VIII. THE due freedom of conſent may be taken away by fear. But of this there are two ſorts, one denoting a ſuſpicion that when one party has fulfilled his part of the bargain, the other party won't fulfil his: the other denotes a terror occaſioned by ſome great evil threatened. As to the former ſort theſe obſervations ſeem juſt: 1. He that voluntarily contracts with openly unjuſt and impious men, whoſe character he previouſly knew, is plainly obliged by his contract, as he muſt have tacitly renounced any exception from their character, which was previouſly known. But 2dly. If he only comes to the knowledge of their characters after the contract, 'tis not indeed void; but he may juſtly delay performing on his part, till they give ſuch ſecurity for the performance of theirs as a wiſe arbiter judges ſufficient. To maintain that all contracts entered into with the unjuſt, or heretical or impious, are void, would deſtroy all faith among men; ſince there are no ſuch obvious characteriſticks to diſtinguiſh the good from the bad as all will agree in: and conſidering the weakneſſes of mankind, they have always had the moſt oppoſite opinions about the moral and religious characters of men around them; as in all ages there have been the greateſt diverſities and contrarieties of opinions.

As to the ſecond ſort of fear; when I have been forced into a contract by fear of evil threatened, there are two caſes, according as the evil is unjuſtly threatened either by him I contract with, or by a third perſon without any colluſion with the perſon I contract with. In the latter caſe when by contract I obtain the aid of an innocent man againſt dangers threatened by another, no doubt I am bound; unleſs there be ſomething very exorbitant in the terms. For the giving aid in ſuch perils is no doubt a moſt uſeful ſervice, well deſerving compenſation.

" rent." By this I don't bind myſelf to live in the country. " I promiſe, if I incline to ſell certain lands, that ſuch a man " ſhall have them at a certain price."

If indeed I am threatened unjuſtly with ſome great evil by any man unleſs I enter into a certain bargain, or make a promiſe to a third perſon, who is in no colluſion with him who threatens me, while yet I am forced to conceal from him the terror I am under; the bargain or promiſe is void, becauſe by this terror I am deprived of that liberty which is neceſſary in commerce. But any damage this innocent perſon ſuſtains by the diſappointment, I am bound to make it good, as it was occaſioned by me for my own ſafety. The ſame holds when through my cowardice I have been exceſſively afraid without cauſe.

Any contracts entered into from fear of a juſt magiſtrate, or the ſentence of a judge, are plainly valid, ſince we are deemed ſubjected to ſuch civil power

IX. BUT when I am forced to contract through fear of evils unjuſtly threatened by the very party I contract with, we muſt diſtinguiſh whether theſe evils are threatened under ſome ſuch plauſible ſhew of right as might poſſibly impoſe upon an honeſt man, or on the other hand, by openly avowed injuſtice, without any ſuch ſhadow of right. In the former caſe, tho' the author of ſuch violence acquires no right by it, which he can uſe with a good conſcience, yet on account of ſome more diſtant intereſts of mankind, he may have a ſort of *external right*, with which the other party may be bound to comply. Nothing is more incident to mankind than to miſtake about their rights; and hence ariſe wars too frequently, while yet neither ſide is ſenſible of the injuſtice of their cauſe. Theſe wars muſt either be compoſed by treaties and contracts, or muſt end with the ruin of one ſide. Now 'tis highly eligible that they ſhould be ended rather by ſome treaty: and treaties could be of no uſe if they ſtill lay open to this exception of unjuſt force, which either ſide might plead whenſoever they inclined to renew the old controverſy. This exception therefore muſt not be allowed againſt treaties of peace, when there

were any plauſible pretences on both ſides for the preceding war. If indeed the terms of peace are manifeſtly iniquitous and oppreſſive, contrary to all humanity, making life quite miſerable and ſlaviſh to the leſs fortunate ſide; ſuch treaties have no plauſible ſhews of juſtice, and lie open to the exception *.

But where violence is uſed or threatened, without any pretence of right, to extort promiſes or contracts, they cannot be obligatory. By ſuch violence the author of it plainly abdicates or forfeits all the rights of men; all the benefits to be claimed from the law of nature, or the humanity of his fellows, as he openly profeſſes himſelf a common enemy to all, free from any ſocial tie. The common ſafety therefore requires that ſuch monſters ſhould be cut off by any means. Suppoſe that ſuch extorted promiſes were valid, yet whatever upon ſuch a promiſe is due to the author of the violence, he is always indebted at leaſt as much to the perſon thus compelled, upon account of damage done him unjuſtly: theſe two claims therefore extinguiſh each other by *compenſation*. Nor can one here allege that by the act of promiſing under this terror the promiſer tacitly renounces this exception of unjuſt force previouſly known; for this ſordid renounciation alleged is one part of the damage: and what pretence is there of alleging an obligation by tacit compact, to one who in ſuch a cauſe is incapable of acquiring a right by the moſt expreſs contract, and who in this very affair abdicates or forfeits all human rights?

But, however that no regard is to be had to ſuch perſons in thus trampling upon all the rights of mankind, yet when they ſufficiently appear to be returning to a ſoberer mind, aſking pardon of what's paſt, offering to quit their faſtneſſes, to deliver their arms, and to give ſecurity for their future conduct; and when ſuch confederacies cannot be otherways deſtroyed without ſhedding much innocent blood of

* See Book II. Ch. xv. 8. and Book III. Ch. vii. 8. 9.

our citizens; the common intereſt may ſometimes require to enter into ſuch treaties with them, and to obſerve them faithfully: and as many of our citizens who by this means are excluded from proſecuting them for reparation of damages, they ought to obtain it from the community.

X. CONTRACTS or promiſes cannot be of force unleſs the matter of them be *poſſible* to the parties: and therefore no man can be obliged to * what he cannot accompliſh tho' he ſeriouſly deſired it. If one has promiſed any thing, which by ſome ſubſequent accident without his fault becomes impoſſible, he is only obliged to reſtore or compenſate the value of any thing he received in conſideration of it. Where the fraud or other groſs fault of one party either made the matter impoſſible, or concealed the impoſſibility, he is obliged to make good † the profit which would otherways have ariſen to the other.

The matter of contracts muſt alſo be lawful: that is, our contracts or promiſes ſhould be only about the natural matters of commerce, which can be alienated, the adminiſtration of which is committed to human prudence, and not prohibited by any ſpecial law. No obligation therefore can ariſe from any promiſe, to violate directly the reverence due to God, or the perfect rights of others, or to do what any ſpecial law prohibits, or what is not committed to our power.

1. If therefore both parties know the unlawfulneſs of the terms of any contract, or ought to have known it, the contract is void. The one who employed another to commit a crime, may redemand what he gave to the perſon hired, before he has committed the crime. And if the crime be previouſly committed, the executor ought not to have the hire; nor if he previouſly received it, can the perſon who hired him redemand it. Both equally deſerve the higheſt puniſhments; nor ſhould neither hold any advantage by ſuch engagements.

* Book II. Ch. iii. 2.

† *Præſtare quod intereſt.*

If after the contract the iniquity of it appears to either ſide, which they had not formerly conſidered; before execution either of them may free himſelf from it; and any reward given ſhould be reſtored. Nor after execution can the perſon employed claim his reward, unleſs the moral turpitude affect only the hirer, and not himſelf; or unleſs his ignorance was no way culpable. But where the turpitude only affects the perſon who employed him, then he may juſtly claim his hire. 'Tis the general intereſt of mankind that there ſhould be no allurements to ſuch crimes, nor dependence upon ſuch contracts

But if the vice in any performance of covenant only conſiſt in this, that a man has managed imprudently and contrary to the duty of a diſcreet cautious man, in theſe matters which naturally fall under commerce; 'tis of ſuch importance to maintain the faith of commerce, that in this caſe, too "our tranſactions and covenants are obligatory, tho' "we were faulty in entering into them."

Covenants about the goods or actions of others which are not ſubjected to our power, are in the ſame caſe with thoſe about impoſſibilities. Whoever has acted fraudulently in ſuch covenants is liable to make good all the profit would have accrued from the faithful performance of them: and he who has deceived others by any culpable negligence is obliged to compenſate the damages.

XI. EVERY ſort of contracts about one's goods or labours does not immediately diveſt him of all moral power of tranſacting about them in a different manner with others. This is the caſe only in ſuch as convey the entire property at once, or a real right; or ſuch as give another the whole right to one's labours for a certain time, or during life, ſo as to preclude his contracting with others about the ſame. But when one has only made a contract conſtituting a *perſonal right* againſt himſelf, he may thereafter convey a valid *real* right, to ſuch as knew

nothing about the former contract, which will take place of the perſonal right tho' prior. Where indeed this new grantee has acted fraudulently, being apprized of the former contract, the ſubſequent one ſhould be void. For the law of nature can never confirm frauds, or any * contracts plainly contrived and deſigned to elude any obligations of humanity, when this deſign muſt be known to both parties in the contract. But in other caſes, "of "two covenants entered into with the ſame per-"ſon, the latter derogates from the former." But of contracts entered into about the ſame thing with different perſons, "ſuch as convey a real right take "place of thoſe which only convey a perſonal;" provided there has been no fraud on his part to whom the real right is transferred. And laſtly, in contracts of the ſame nature entered into with different perſons, "the prior takes place of the poſ-"terior."

XII. WE may contract by *factors* or *agents*, or perſons commiſſioned for that purpoſe, as well as in our own perſons. Where full powers are given, and no ſpecial inſtructions to be ſhewn to all he deals with, expreſſing the extent of our agent's commiſſion, and how far we ſubject our rights to his tranſactions; we are deemed to be obliged to ratify what he does in our name, unleſs we can make proof that he acted fraudulently, or was bribed by the other party; or the manifeſt iniquity of his deeds ſatisfy a prudent arbiter that he muſt have been corrupted. As to any ſmaller injuries we ſuſtain, we muſt impute them to our agent, while we ratify what he has done with others.

But when the powers of the agent are ſpecially declared to all concerned, what he tranſacts beyond theſe bounds does not oblige his conſtituent.

* Matth. xv. 5. Mark vii. 11.

CHAP. X.

OUR OBLIGATIONS IN SPEECH.

OUR duties in the uſe of ſpeech have a near affinity to thoſe in contracts. Mankind enjoy this pre-eminence above other animals, that they have the powers of reaſon and ſpeech, by which chiefly a ſocial life, commerce, and an intercourſe of kind offices are maintained. 'Tis in general plain that we are bound to uſe theſe excellent gifts of God in ſuch manner as is moſt conducive to the general good, and ſuitable to our ſeveral obligations in life.

In this important matter we have very manifeſt indications of what God requires of us in the very ſtructure of our nature: an immediate ſenſe ſeems to recommend that uſe of ſpeech which the common intereſt requires. In our tender years we are naturally prone to diſcover candidly all we know. We have a natural averſion to all falſhood and diſſimulation, until we experience ſome inconveniency from this openneſs of heart, which we at firſt approve. Reflection, a regard to the common good, and a prudent care of our own ſafety, will often perſuade us to conceal or be ſilent about certain things; and to reſtrain the firſt impulſe of our mind. But when we reſolve to ſpeak to others, then both the immediate ſenſe of our hearts, and a rational regard to the common intereſt, will recommend and enjoin upon us this ſteady rule or purpoſe, of ſpeaking nothing contrary to the ſentiments of our heart, or which will deceive others. Theſe are our natural ſentiments whether we are judging of our own conduct or that of others.

For as a great ſhare of the moſt uſeful knowledge in the affairs of life, as well as that of a more ſpe-

culative kind, is acquired from the converſation of others who are under no ſpecial obligations of communicating to us their ſentiments; this advantage of a ſocial life, not to mention the pleaſures of converſation with mutual confidence, muſt be entirely loſt, unleſs men maintain truth and fidelity in all their diſcourſe with each other.

What we ſay of ſpeech holds alſo concerning other ſigns uſed for the ſame purpoſe of communicating our ſentiments, viz. common writing, or hieroglyphicks.

II. WE muſt alſo obſerve here that there's twofold uſe of ſigns, whether natural, or artificial and inſtituted: * one in which the perſon who cauſes the appearance is never imagined to make any profeſſion, or to have any intention of communicating his ſentiments to others. The ſpectator according to his own ſagacity concludes from the appearances ſome fact or other, without imagining that the perſon who occaſioned theſe appearances did it with a view to give him any information. The other uſe of ſigns is of ſuch a nature that it plainly contains this profeſſion, or gives the obſerver juſt ground to conclude that ſuch ſigns were made deſignedly to intimate ſomething to him.

In the former way of making ſigns, there's no peculiar obligation: we are only under that obligation common to all parts of life, to do no hurt to our neighbour without a juſt cauſe. But when there is juſt cauſe, as in the caſe of a juſt war, we may without blame uſe ſuch arts of deceiving, which are called *ſtratagems*. Nay provided we do no hurt to any innocent perſon, there's no crime in deceiving † by ſuch ſort of ſigns our very beſt friends.

* See *Grotius de Jure belli, &c.* L. III. 1. 8.

† Thus an army intending to decamp in the night, yet keep all their fires burning in the old places to conceal their motions. A ſtudious man to avoid interruption keeps his door ſhut, and his ſtreet-windows darkened, whence we conclude that he is abroad.

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But we are under very different obligations as to the other uſe of ſigns. For without preſuppoſing any old covenant or formal expreſs agreement, the very uſe of ſigns in certain circumſtances may plainly contain the nature of a *tacit convention*, and he who exhibits them is juſtly underſtood to covenant with the other to communicate his ſentiments according to that interpretation of theſe ſigns which is either natural or cuſtomary, unleſs there be ſome ſpecial reaſon * in the caſe, known on both ſides, why we ſhould depart from the ordinary interpretation. For did we not univerſally underſtand ſuch an agreement as to ſpeech, it would be a ridiculous action either to addreſs ſpeech to another or to liſten to it. And the ſame holds as to † other ſigns natural or inſtituted, uſed in this manner.

Theſe therefore are the laws of ſpeech and writing. 1. "Where others have a right to know the "whole ſentiments of the ſpeaker, he is obliged not "only to ſpeak truth but to reveal the whole truth." This holds as to witneſſes in courts of juſtice, and ſuch as have engaged to communicate the whole myſteries of any art.

The ſecond law is, "Tho' others may have no "peculiar right to know our ſentiments, yet "when we ſpeak to them, we ſhould ſay nothing "but what agrees with our ſentiments according to "the common interpretation which obtains among "men of underſtanding." One is therefore guilty of falſhood or lying who ſpeaks what is thus contrary to his ſentiments, altho' by ſome unuſual way of interpreting the words, or by ſome mental reſervation, it might agree with them. If ſuch arts were allowed, a gate would be opened to all deceit and fraud.

* A cypher agreed upon, for inſtance.

† Thus ſending wings or ſpurs to a friend at court, intimates to him that we imagine he is in danger, and contains this profeſſion.

III. THAT our duty in this point may the better appear, we muſt obſerve, 1. that all ſigns, eſpecially words, ſhould be uſed in the cuſtomary manner, without regard to antient obſolete meanings or etymologies. Expreſſions of civility and courteſy, or titles of honour, deceive nobody. They are known not to ſignify what the ſame words do on other occaſions.

2. If 'tis known to all concerned that in ſome affairs certain perſons are allowed to deceive; nor does the perſon deceived, when he comes to diſcover it, complain of it as an injury; what artifice or falſe-ſpeaking is uſed in theſe affairs is not deemed criminal. This is the caſe in many diverſions; and ſometimes in ſerious buſineſs, when we commit ourſelves entirely to the conduct of others, in whoſe wiſdom and fidelity we confide; as patients do to phyſicians, and ſoldiers to their commanders in chief.

3. Nay if the cuſtom has prevailed in war, that enemies deceive each other by falſe narrations when they can, nor do the deceived complain of it as a violation of the laws of civilized nations: one may judge that by a new tacit convention enemies have remitted to each other that right otherways founded in the general convention contained in the addreſſing of ſpeech to others. But a candid mind would not without the moſt urgent cauſes uſe ſuch methods, ſince they have a ſtrong appearance of moral turpi ude.

4 But the deceiving of enemies by any pretence of a treaty or covenant, never was nor can be allowed. As it is by treaties alone that we can maintain the more human methods of carrying on war, and prevent the moſt ſavage cruelties; or reſtore peace again without the deſtruction of one ſide, or reducing them to miſerable ſlavery.

5. But this obligation about ſpeech, as all others founded in tacit conventions may be prevented or

taken away, by a * timely premonition of all concerned.

6. Beſide the above-mentioned exception of unjuſt force in matters of contracts, ſome plead for another exception from ſome grievous and extraordinary neceſſities; when without falſe ſpeaking we cannot preſerve the innocent, or the moſt worthy perhaps of mankind, or even a whole nation, from ruin. Whatever force there is in this exception, 'tis plain it is not peculiar to this ſubject; ſince it ſeems, as we ſhall † hereafter ſhew, that this exception takes place in moſt of the other ſpecial laws of nature.

7. Where men with malicious intentions, and without having any right to demand it, are endeavouring to diſcover a perſon's ſentiments by captious and inſidious queſtions, when even his ſilence would diſcover all they want to his ruin: if there occur to him ſuch anſwers as to good unprejudiced men would bear a true ſignification according to his ſentiments, while yet they will appear to theſe inſidious enemies to ſignify ſomething very different; he may uſe ſuch evaſive anſwers, tho' he foreſees that his unjuſt enemies will be deceived by them.

8. Since maintaining veracity in all our converſation is of ſuch importance in ſociety, 'tis plainly unlawful to uſe falſe ſpeaking from any of thoſe ſmaller motives which frequently occur in life; ſuch as to pacify men in a paſſion of anger, or to comfort the ſorrowful; or in general to obtain any advantages or avert any evils which are not of the very higheſt kinds. For we may by other means conſiſtent with all candour and ſincerity generally obtain theſe ends more effectually, and either prevent theſe evils, or aſſiſt men to bear them with

* See the preceding Chap. § 6.

† Ch. xvi. of this Book.

‡ Of this there are inſtances in very great characters; as alſo of many expreſſions which the ſpeaker abundantly knew that the hearers would underſtand in a very falſe ſenſe.

fortitude. And however ſuch falſe ſpeaking may at firſt have ſome effect, before it becomes known that we make no conſcience of ſpeaking truth in ſuch caſes; yet, when this is once known, and when men generally take this liberty, they loſe all credit in ſuch caſes with others, and mutual confidence is deſtroyed. So much concerning veracity.

IV. BUT there are other ſacred duties in the uſe of ſpeech; and this in the firſt place, that we ſtudy to make our ſpeech profitable to others, in recommending and cheriſhing ſincere virtue, in correcting the vain imaginations of men about the true happineſs of life; in teaching, admoniſhing, exhorting, comforting, and ſometimes re.proving ſharply, and all theſe ſhewing an hearty intention of doing good. Theſe too are among the moſt honourable offices, to reconcile friends who have been at variance, to prevent animoſities, or to compoſe them Nor is there any thing a good man will more conſcientiouſly avoid than hurting the characters of others. Nay he will not only avoid the ſpreading of falſe calumnies, but will conceal the ſecret faults of others, unleſs he be forced to divulge them to prevent the ſeducing the innocent, or to avert ſome publick evil. For men who have loſt their characters and are publickly infamous, are on this account far harder to be reclaimed to virtue; and the more that vice appears to abound in the world, the vitious grow the more impudent.

Criticks have obſerved that many words, beſide their primary meaning, have alſo an additional ſignification of the diſpoſitions of the ſpeaker: and hence there are often three ſorts of names for the ſame things or actions. One of a middle nature, barely denoting its object; another denoting the ſpeaker's delight in it; or his keen paſſion for it; the third denoting his averſion and hatred of it. And from this we ſee how to anſwer the reaſonings of the old *Cynicks*, againſt ſuppoſing any crime in obſcenity of language; that tho' it be true, there's

no work of God, or natural action, which may not be a proper ſubject of inquiry and ſpeech to a good man on ſome occaſions, yet we may evidence great depravation and turpitude of mind in ſpeaking about the diſſolute actions of others: to wit, by uſing ſuch words as betray a like diſſolute temper in ourſelves, and a delight in ſuch vices, and kindle like vitious paſſions in the minds of the hearers. And in this conſiſts obſcenity, which is hateful and deteſtable in converſation.

CHAP. XI.

Of OATHS *and* VOWS.

OATHS are deemed a natural confirmation of promiſes or teſtimonies, in the more important affairs: an *oath* is "a religious act in which for "confirmation of ſomething doubtful, we invoke "God as witneſs and avenger, if we ſwerve from "truth." A truly good man indeed will ſo ſtrictly regard veracity, that ſuch as know him well need not require his oath. But when the intereſts of thoſe are at ſtake who know not his character, they may juſtly demand his oath, in confirmation either of his teſtimony or his promiſe. Since the uſing of oaths in ſuch caſes contains no impiety towards God, but is rather an expreſſion of pious reverence, as we acknowledge in ſwearing his univerſal knowledge, and government, and juſtice.

And ſince this perſuaſion has obtained in all nations and ages, that God exerciſes a juſt government over the world, inflicting puniſhments on the wicked; this invocation of God as witneſs and avenger muſt raiſe in mens minds an higher ſenſe of their obligations, and deter them from falſhood. But we muſt not imagine that our invocations make God more attentive in obſerving, or more keen in puniſhing perfidy; or that by our voluntary conſent we give him any new right of puniſhing he had

not before. Our own guilt indeed is made much greater when, after the confirmation of an oath, we either violate our promiſes, or falſify in our teſtimony.

To ſwear about trifling matters, or without any cauſe is very impious, as it plainly tends to abate that awful reverence which all good men ſhould conſtantly maintain toward God, and is a plain indication of contempt. Where perjuries in ſerious matters grow frequent in any ſtate, the magiſtrates or legiſlators are generally chargeable with much of the guilt, if they either frequently exact oaths without neceſſity in ſmaller matters, or when the oaths give no ſecurity in point of view *; when the engagement deſigned may either be impracticable, or appear to the perſons concerned to be unlawful; or if oaths are required † where there are great temptations to perjury, with hopes of impunity from men. They alſo do bad ſervice to religion who don't appoint an awful ſolemn form of words, fit to ſtrike the minds of men with reverence in ſuch an action.

II. 'Tis no doubt vain to exact from others, or to ſwear by any being whom the ſwearer judges not inveſted with divine power, ſo as to invoke that being as witneſs and avenger. And yet there are ſome forms of oaths truly valid and not unlawful, tho' not the moſt convenient, where without expreſſing the name of God, the ſwearer either names ſomething very dear or neceſſary to himſelf ‡ upon which he is underſtood to imprecate the divine vengeance, or that he may be deprived of it if he

* Thus engagements by oath to adhere to certain ſchemes of religion, which may afterwards appear falſe; or to a government which may appear an unjuſt uſurpation.

† Thus *purgatory oaths* as to capital crimes, or very ſecret matters of ſcandal, or injuſtice, or about a man's ſecret opinions, generally have no good effect.

‡ So we underſtand ſwearing by one's *head*, his *life*, his *ſoul*, his *children*, his *prince* or *patron*, the *earth*, the *light*, the *ſun*.

ſhould act perfidiouſly; or truly invokes God under ſome * metonymical expreſſion.

Tho' it be idle to exact an oath from any one by any being whom he conceives not as endued with divine power, nor exerciſing any providence; yet there are certain general deſcriptions of the Deity in which men of the moſt oppoſite religions agree; ſuch therefore ought to be uſed, when perſons of different religious ſentiments are required to ſwear.

As in covenants, ſo in oaths, he is juſtly deemed to have ſworn, and to be liable to the penalties of perjury ſhould he falſify, who profeſſing an intention of ſwearing makes ſuch ſigns as ordinarily ſignify to others that one ſwears.

Although an oath and a promiſe, or an aſſertion, may often be expreſſed by one and the ſame grammatical ſentence; yet the act of ſwearing is plainly a diſtinct one from that of promiſing or aſſerting; as it conſiſts in the invocation of God to avenge if we violate our faith. This ſhews therefore that mens duties are not altered as to their matter by an oath; nor any new matter of obligation produced; nor any covenant or promiſe otherways void confirmed; nor juſt exceptions excluded; nor conditional contracts made abſolute; nor any obligation impoſed to act contrary to the perfect rights of others, or about matters not ſubjected to our power, or what would be a direct piece of irreverence and impiety toward God, or a violation of any ſpecial prohibition, by which we are precluded from tranſacting in certain affairs. But in matters naturally ſubjected to our power and committed to human prudence, as we may bind ourſelves by a common contract, ſo much more by one confirmed by oath, even when we have entered into it imprudently and raſhly, contrary to the rules of diſcretion; unleſs when there has been a plain obvious fraudulent deſign of defeating ſome obligations of humanity.

* 'Tis thus men ſwear by their *faith*, viz. the object of it; or by the *heavens*, the *temples*, or *altars*; for the Divinity reſiding in them, or to whom they are dedicated.

III. A promiſe, tho' confirmed by oath, can produce no obligation, unleſs it has been accepted by the other party, who alſo after his acceptance may remit to us his right, and free us from the promiſe. A promiſe in like manner is void, upon the declared diſſent of a perſon whoſe conſent was neceſſary before the promiſer could oblige himſelf, or the other party accept of it.

Where one requires of us an oath by his juſt authority, and preſcribes to us the form of words; if we underſtand his ſenſe of the words, and can ſincerely ſwear in that ſenſe, 'tis well; if not, we ſhould not take the oath. No inferior magiſtrate deputed to take an oath in the name of the ſtate has a right to give explications of the *formula* preſcribed by the ſupreme powers.

Oaths according to their different purpoſes are divided into *promiſſory* and *aſſertory*. Oaths of this latter ſort when required by a judgment are called *neceſſary*: and when one party in judgment refers the cauſe to the oath of the other, 'tis called *judicial*. If this be done, not in judgment, but by the private deed of the parties, 'tis called *voluntary*. When an oath is demanded from the perſon accuſed in a criminal action, to refute imperfect proof, 'tis called a *purgatory oath*, or *oath of purgation*.

But in ſuch caſes where a perſon's life or character is concerned, as there are very high temptations to perjury; this way of exacting purgatory oaths in trials is highly improper and unjuſt. By this means the impious and wicked will always be abſolved; and thoſe only convicted who retain ſuch a ſenſe of piety that they won't even for preſervation of life or character perjure themſelves. A good man ſurely would rather chooſe that ſuch perſons ſhould eſcape puniſhment for a doubtful crime, (of which, if they have really been guilty, they will probably ſoon repent ſincerely), than that they ſhould be brought to ſuffer by their very ſenſe of religion.

IV. A vow is a religious promiſe made to God about ſomething to be done or performed. In vows

we don't conceive a right transferred to men, unleſs they have been alſo attended with a contract. The main uſe of vows is this, that by a ſerious conſideration of a juſt and holy Deity beholding all our actions, we may further confirm all our pious and virtuous reſolutions; and be the more cautious of neglecting our duty, leſt we ſhould alſo involve ourſelves in the horrid guilt of perjury.

But as no promiſe not accepted by the party to whom 'tis made can be obligatory; and as we are ſure God will not accept any promiſes made to him raſhly, out of any ſudden fear, or other paſſion, which is contrary to the man's duty; and 'tis moſt unworthy of the Deity to imagine him as it were inſidiouſly watching to catch advantages of the incautious, timorous, wrathful, or ſuperſtitious; or that, contrary to the common intereſt of all, he has ſome favourite orders of men for whoſe advantage he is acting the part of a ſharping agent, ſnatching at all opportunities of gain to them; hence it muſt appear, that vows can produce no obligation to ſuch actions or performances as would not antecedently have been pious, humane, and prudent. Much leſs are vows of any avail which men take on themſelves from hatred, envy, groundleſs or exceſſive anger, or contrary to either the perfect rights of others, or even any obligations of humanity *. Vows therefore produce no new matter of obligation.

CHAP. XII.

Concerning the VALUES *or* PRICES *of* GOODS.

TO maintain any commerce among men in interchanging of goods or ſervices, the values of them muſt be ſome way eſtimated: for no man would give away things of important and laſting uſe or pleaſure in exchange for ſuch as yielded little of

* Mark vii. 11, 12.

either; nor goods which coſt much labour in acquiring, for ſuch as can eaſily be obtained.

The ground of all price muſt be ſome *fitneſs* in the things to yield ſome uſe or pleaſure in life; without this, they can be of no value But this being preſuppoſed, the prices of things will be in a compound proportion of the *demand* for them, and the *difficulty* in acquiring them. The *demand* will be in proportion to the numbers who are wanting them, or their neceſſity to life. The *difficulty* may be occaſioned many ways; if the quantities of them in the world be ſmall; if any accidents make the quantity leſs than ordinary; if much toil is required in producing them, or much ingenuity, or a more elegant genius in the artiſts; if the perſons employed about them according to the cuſtoms of the country are men in high account, and live in a more ſplendid manner; for the expence of this muſt be defrayed by the higher profits of their labours, and few can be thus maintained.

Some goods of the higheſt uſe, yet have either no price or but a ſmall one. If there's ſuch plenty in nature that they are acquired almoſt without any labour, they have no price; if they may be acquired by eaſy common labour, they are of ſmall price. Such is the goodneſs of God to us, that the moſt uſeful and neceſſary things are generally very plentiful and eaſily acquired.

Other things of great uſe have no price, either becauſe they are naturally deſtined for community, or cannot come into commerce but as appendages of ſomething elſe, the price of which may be increaſed by them, tho' they cannot be ſeparately eſtimated *; or becauſe ſome law natural or poſitive prohibits all buying or ſelling of them. Of this laſt ſort are all religious offices, actions, or privileges; and even the ſalaries of religious offices, which are either deemed only what is neceſſary for the ſupport of perſons in ſuch offices, or are committed to their

* Examples of theſe ſorts are the air, the light of the ſun, wholeſome air in certain ſituations, fine proſpects.

truſt as funds of liberality and charity toward the indigent. Buying and ſelling of ſuch things from a well known piece of hiſtory is called *ſimony*.

II. But as it may often happen that I want ſome goods of which my neighbour has plenty, while I have plenty of other goods beyond my own uſe, and yet he may have no need of any of my ſuperfluous ſtores; or that the goods I am ſtored with beyond my occaſions, may be quite ſuperior in value to all I want from my neighbour, but my goods cannot be divided into parcels without great loſs: for managing of commerce there muſt ſome ſort of ſtandard goods be agreed upon; ſomething ſettled as the meaſure of value to all others; which muſt be ſo generally demanded, that every one will be willing to take it in exchange for other goods, ſince by it he may obtain whatever he deſires. And indeed as ſoon as any thing is thus made the ſtandard all values, the demand for it will become univerſal, as it will ſerve every purpoſe.

The goods which are made the ſtandard ſhould have theſe properties; firſt, they ſhould be of high value, that ſo a ſmall portable quantity of them may be equal in value to a great quantity of other things; again, they ſhould not be periſhable, or ſuch as wear much in uſe; and laſtly, they ſhould admit of all manner of diviſions without loſs. Now theſe three properties are found only in the two more rare metals, ſilver and gold; which therefore have been made the ſtandards of commerce in all civilized nations.

III. AT firſt they have dealt in them by weight *; but to prevent the trouble of making accurate diviſions of ſeveral barrs or pieces of metal, and to prevent frauds by mixing them with baſer metals, *coinage* has been introduced. For when the coinage of money is committed under proper regulations to truſty hands, there's ſecurity given to all for the quantities of pure metal in each piece, and any bro-

* This appears both by hiſtory, and the Roman word *impendere, expendere*, &c.

ken ſums agreed upon can be exactly paid without any trouble.

But the real value of theſe metals and of money too, like that of all other goods, is leſſened as they are more plentiful; and increaſe when they grow ſcarcer, tho' the pieces keep the ſame names. The common neceſſaries of life have a more ſtable natural price, tho' there are ſome little changes of their values according to the fruitfulneſs of the ſeveral ſeaſons. Were one to ſettle perpetual ſalaries to certain offices, which ſhould ſupport men perpetually in the ſame ſtation in reſpect to their neighbours, theſe ſalaries ſhould be conſtituted in certain quantities of ſuch neceſſary goods as depend upon the plain inartificial labours of men, ſuch as grain, or other neceſſaries in a plain ſimple way of living.

IV. No ſtate which holds any commerce with its neighbours can at pleaſure alter the values of their coin in proportion to that of goods. Foreigners pay regard, not to the names we give, but to the real quantities of pure metal in our coin, and therefore the rates of goods muſt be proportioned to theſe quantities. But after a legal ſettlement of the denominations o coins, and many contracts and obligations ſettled in theſe legal ſums or denominations, a decree of ſtate raiſing the nominal values of the pieces will be a fraud upon all the creditors, and do much gain to the debtors; and the lowering their nominal values will have juſt the contrary effects.

The values too of theſe two metals may alter their proprietors to each other; if an extraordinary quantity of either of them be brought from the mines; or a great conſumption made only of one of them in the ornaments of life, or great quantities of it exported. And unleſs the legal denominations or values of the pieces be changed in like manner, ſuch coin as is valued with us too low in proportion to the natural value of the metal, will be exported; and what is valued with us too high will remain, or be imported, to the great detriment of the country.

Whereſoever a coinage is made in baſer metals, the quantities in each piece muſt be made ſo much the greater; otherways the trade with foreigners muſt be loſt. When notes or tickets paſs for money, their value depends on this, that they give good ſecurity for the payment of certain ſums of gold or ſilver.

CHAP. XIII.

Of the SEVERAL SORTS *of* CONTRACTS.

CONTRACTS are divided into the *beneficent* and *onerous*: in the former ſome advantage is gratuitouſly deſigned for one of the parties; in the latter the intereſt of both is equally regarded, and the parties profeſs to transfer mutually things of equal value.

There are three ſpecies of beneficent contracts *, *commiſſion* undertaken gratuitouſly, gratuitous *loan for uſe*, and gratuitous *cuſtody* of the goods of others.

In undertaking gratuitouſly to manage the buſineſs of others by their commiſſion, if they have preſcribed a particular manner of executing it, we are obliged to follow their orders; or if we depart from them we are liable to compenſate what damage thence ariſes. Where the matter is left to our prudence, we are deemed bound to uſe ſuch care as a wiſe man uſes in like matters of his own, nor are we liable for every accident which might poſſibly have been prevented by the utmoſt care; unleſs we have expreſsly undertaken for the utmoſt diligence, or the high nature of the buſineſs plainly required it; or we have obtruded ourſelves officiouſly, when others more capable might have been obtained.

* There are no preciſe technical words in Engliſh to anſwer the three Latin words *mandatum*, *commodatum* and *depoſitum*. And therefore the formal definitions are omitted.

We muſt obſerve this about all beneficent contracts, that he who intends a favour to others, is not deemed to undertake an higher obligation than he expreſsly conſents to, or than the nature of the buſineſs commonly requires: but the perſon on whom the favour is conferred, out of gratitude ſhould deem himſelf more ſtrictly bound, and make good all loſſes occaſioned by any the lighteſt fault of his; that none may have occaſion to repent of their intended favours to him.

II. THE gratuitous loan for uſe where the very ſame goods are to be reſtored, binds the borrower to the higheſt care, and to make good all loſſes occaſioned by any negligence of his: (2) nay alſo, to make good ſuch accidents as the goods had eſcaped had they remained with the lender, except he generouſly remit his claim: nor (3) can the borrower take any other uſe than the lender granted: and (4) he ought to reſtore them in good order at the time agreed, no further impaired than they muſt be by the uſe allowed. Nay humanity would oblige to reſtore them ſooner if the owner needs them; or if we need them more and keep them, to make good the loſs he ſuſtains by wanting them.

The gratuitous lender is to refund any expences made upon the goods lent, except ſuch as are ordinarily requiſite in the uſe of them; or at leaſt to refund the value of any improvements made upon them as far as they are bettered for his purpoſes, and ſo he is inriched. The civilians diſtinguiſh between this contract and a *loan for conſumption*, in which the ſame individual goods are not to be reſtored, but equal quantities, weights or meaſures.

III. DEPOSITING of goods for gratuitous cuſtody, obliges the keeper to ſuch diligence as a wiſe man uſes in keeping like goods of his own, and to make good any loſſes by any groſs negligence of his. He ought to make no uſe of them without the owner's conſent, and reſtore them when demanded; except it be for ſuch purpoſes wherein he might have

a right by force to reſiſt the owner. And he juſtly inſiſts to be indemnified as to all expences wiſely employed for preſervation of the goods *.

IV. IN the *onerous contracts*, or theſe for valuable conſideration, the parties profeſs or undertake to transfer mutually goods or rights of equal value. And therefore honeſt men ſhould conceal nothing, or give no falſe repreſentations about the qualities eſtimable in ſuch goods, or their defects: and when they inadvertently have departed from equality, according to the judgment of a wiſe arbiter, he who had leſs value than he gave, ſhould have ſomething further paid him till the contract be brought to equality; and this he has a perfect right to demand; tho' no courts of juſtice could have time to give redreſs to every little iniquity in ſuch matters.

Mutual donation is not to be reckoned among onerous contracts, as in it there is no regard had to equality between the things mutually given.

From what we ſaid about the grounds of price, 'tis plain that in eſtimating the values of goods in any place, we are not only to compute the diſburſement made in buying, importing, and keeping them ſafe, with the intereſt of money thus employed; but alſo the pains and care of the merchant; the value of which is to be eſtimated according to the reputable condition in which ſuch men live, and to be added to the other charges upon the goods. This price of the merchant's labour is the foundation of the ordinary profit of merchants. But as goods exported or imported are ſubject to many accidents, by which they may even periſh altogether; this is a natural reaſon for advancing the price of ſuch goods as are ſafe. And as merchants are liable to loſſes when the prices of ſuch goods, as they are well ſtored with, by any unexpected plenty happen to fall; to make good ſuch caſual loſſes they have

* The Tranſlator omits the next paragraph in the original, explaining the *actiones directæ et contrariæ* of the civilians.

a right to take a larger profit, when the goods they are well ſtocked with happen by any accidental ſcarcity of them to riſe in their prices.

V. THESE are the principal onerous contracts. 1. *Barter* or exchanging goods for goods. 2. *Buying* and *ſelling*; the ſimpleſt form of which is at once paying the money and receiving the goods. If it is agreed that the goods are to be delivered on ſome future day, the price being previouſly paid, or ſuch ſecurity given for it as the ſeller accepts; before the day fixed the ſeller muſt run the hazard of what accidents befal the goods; but after the day, if the ſeller was ready then to deliver them, he is only in the caſe of one with whom they were depoſited; as he would have been from the firſt if he was then ready to deliver them *.

Sometimes men purchaſe no certain goods but an hazard, or ſome advantage upon a contingency. In ſuch contracts equality may be preſerved if the price is abated below the real value of the advantage in a juſt proportion to the hazard of our gaining no advantage at all.

VI. IN *location*, or ſetting to hire, for a certain price we allow one the uſe of our goods, or our labour. The ſetter ſhould make the goods fit for uſe, and uphold them ſo; and the hirer is bound to uſe them as diſcreet men uſe like goods of their own, and to make good any loſſes occaſioned by any groſs negligence of his. If the goods periſh without any fault of his, he is no longer liable for the price of the hire than he had the uſe of them: or if without his fault they become leſs fit for uſe, he may inſiſt on an abatement of the price or rent. But as in lands all the profits of a plentiful year fall to the tenant, ſo he muſt bear the caſual loſſes of a leſs

* The Tranſlator here omits a paragraph explaining ſome terms of the Roman law not neceſſary to an Engliſh reader. Such as *addictio in diem*, *lex commiſſoria*, *lex retractus*, *pretimeſios*, &c.

fortunate one. Indeed the rarer caſes of extraordinary calamities, ſuch as of wars, inundations, peſtilence, ſeem to be juſt exceptions; as the tenant cannot be preſumed to have ſubjected himſelf to rents in ſuch caſes. † And in moſt of contracts the agreements of parties alter the obligations.

One who is hired for a certain piece of work, if he is hindered from it by any accident, has no claim for the hire. But when one hires a perſon by the year, or for a longer time, the hirer ſeems bound to bear the loſs occaſioned by any ſuch ſhort fits of ſickneſs as the moſt firm conſtitutions are ſubject to, nor can he on that account make any deduction from the price agreed upon.

VII. IN *loans for conſumption* *, we don't expect the ſame individual goods, but equal quantities by weight or meaſure. If the loan is not deſigned as a favour, there's a right to demand *intereſt*. Nor is it neceſſary to make intereſt lawful that the goods lent be naturally fruitful: for tho' money for inſtance yields no natural increaſe; yet as by it one may purchaſe ſuch goods as yield increaſe; nay by employing it in trade or manufactures may make a much higher gain; 'tis but natural that for ſuch valuable advantages accruing to us by the loan, we ſhould give the owner of the money ſome price or recompence proportioned to them. The prohibition of all loans for intereſt would be deſtructive to any trading nation, tho' in a democracy of farmers, ſuch as that of the Hebrews was, it might have been a very proper prohibition.

The juſt intereſt of money is to be determined according to the quantity of wealth employed in trade. Where there's a ſmall quantity of money in a nation, and conſequently all goods very cheap, a great profit is made by any ſmall ſums employed in

† A part alſo of the following ſection is omitted for the ſame reaſon, about the *locatio operis* and *locatio operæ*.

* *Mutuum.*

trade with foreigners. And therefore a great intereſt may well be paid. But where much money is employed in trade, a ſmaller profit is made on each ſum thus employed, as the prime coſt of goods is high; and therefore a ſmaller intereſt can be afforded for it. If civil laws ſettling intereſt do not regard theſe natural cauſes, they will not have their effect.

The obligations in the contracts of *partnerſhip* are abundantly known by the rules of arithmeticians.

VIII. WE ſaid above that contracts about hazards may maintain the juſt equality: and ſome of them are of great uſe in ſociety, theſe particularly which enſure againſt ſhipwreck, robbery, or fire: as by their means many active induſtrious hands have their ſtocks preſerved to them, which otherways had periſhed. Theſe contracts ſeem of the ſame effect with a humane and ſalutary partnerſhip among multitudes to ſhare among them any loſſes may happen; ſince 'tis by the premiums paid by thoſe whoſe goods are ſafe that the enſurers are enabled to make good the loſſes of the unfortunate.

Nor is there any thing blameable in this that a large number for diverſion contribute to purchaſe any piece of goods, and then caſts lots who ſhall have it: provided none of them expoſe to ſuch hazards ſo large a portion of their goods that the loſs of it would occaſion any diſtreſs to themſelves or families.

The ſame may be ſaid of wagering, and of various games in which there's hazard; which are not always blameable on the account of hazard, or of any inequality. But then there is nothing more unworthy of a good man than, without neceſſity, to expoſe to uncertain hazard ſuch a ſhare of his goods, as the loſs of it would diſtreſs his family; or to be catching at gain from the fooliſh raſhneſs of others, ſo as to diſtreſs them. All ſuch contracts therefore are to be condemned, unleſs they are about ſuch trifles as men of wealth can afford to

throw away upon their amuſements. And beſides, 'tis highly unbecoming a good man to give himſelf up entirely to diverſions, or waſte much time upon them; or ſo to inure himſelf to amuſements, as to contract habits of indolence and trifling, making him leſs fit or inclined for ſerious buſineſs.

As to theſe more publick projects of lottery, in which great multitudes may be concerned, as they bring in no new wealth to a ſtate, and only enrich ſome few of the citizens by the loſſes of others; and as men thro' ſome vain opinions of their own good luck are generally very prone to them, they ſhould be every where under the reſtraint of laws; leſt that wealth, which were it employed in manufactures or commerce would be adding new ſtrength to the ſtate, ſhould be turned into this uſeleſs and diſhonourable channel, expoſed too to innumerable frauds, and an inſociable, fooliſh, and ſlothful avarice to be encouraged among the citizens.

IX. IN confirmation of contracts men often give bail or ſureties, and pledges. The bail or ſurety is bound to make good what is due, in caſe the principal fails. And as the creditor frequently truſts more to the ſurety than to the principal, his obligation is equally ſacred: nor may he uſe any evaſive arts more than if the debt were wholly his own: nor can he even juſtly delay the payment, unleſs he finds a fraudulent colluſion between the creditor and the principal to diſtreſs him.

The obligation of the ſurety may be ſtricter than that of the principal, if he has given either a pledge or an oath of performance; but as he is ſurety he cannot be bound in a different ſum or different goods, or payable at a different time or place, or upon a different foundation. He may juſtly inſiſt that a ſuit be firſt commenced and judgment given againſt the principal; and where more than one are ſureties, each one may inſiſt that the loſs be divided either equally among them, or in the proportion in which they bound themſelves.

Sureties were ſometimes given in criminal actions. They may be juſtly liable to pay the fines. But it would be inhuman to allow them to be ſubjected to any corporal puniſhments for the crimes of others.

We formerly touched at the ſubject of pledges and mortgages. If the things pledged yield increaſe, this is to be deducted annually from the intereſt or principal of the debt. The *clauſe of forfeiture* at the day fixed has no iniquity in it, provided any ſurplus of value in the pledge be reſtored to the debtor after the debt is thus diſcharged. The pledgee is bound to keep the pledge with ſuch diligence as a diſcreet man keeps like goods of his own, and not anſwerable for any thing further, as this contract equally regards the utility of both parties. Pledges and mortgages conſtitute real rights not to be defeated by any prior perſonal rights.

CHAP. XIV.

* OBLIGATIONS *reſembling thoſe from* CONTRACTS.

BESIDE theſe obligations and rights already mentioned, there are others which ariſe from ſome lawful action of the perſon bound: of ſuch as ariſe from unlawful actions we treat in the next chapter. Theſe rights ariſing from lawful actions, ariſe either from the nature of property, or from ſome manifeſt intereſt of ſociety, and common ſocial laws. The obligations anſwering to them the civilians feigned to ariſe from contracts, that the forms of the actions might be the ſame. They are

* *Obligationes quaſi ex contractu.*

quite different from thoſe of *tacit conventions*, as in tacit conventions we truly conclude conſent from ſome action; but in thoſe 'tis plainly feigned, tho' we know there was no conſent, as the matter itſelf is equitable. The obligation by a tacit convention is quite prevented by a previous contrary declaration of the party: but not ſo in theſe we now ſpeak of; as they have another juſt foundation, independent of the conſent of the perſon obliged.

Of theſe there are two claſſes, one ariſing from this, that a perſon intermeddles without any contract with the goods of others, or ſuch upon which others have a juſt claim: the other, from a perſon's taking to himſelf and holding ſome valuable advantage at the expence and loſs of others, who conſented not to ſuſtain ſuch loſs gratuitouſly. In the former claſs is included the obligation of ſuch as poſſeſs the goods they know belong to others, to reſtore the goods with their profits; as alſo his obligation † who without commiſſion manages any buſineſs for an abſent perſon, or for a minor. All theſe are bound to account, and to reſtore the goods with their increaſe and profits.

The like is the obligation of the heir or executor toward the creditors or legatees of the deceaſed; and it ariſes from his entering heir, or undertaking the execution of the will. For 'tis plain, all the effects of the deceaſed are naturally chargeable with his debts, and with whatever others have a perfect claim to. He therefore who takes poſſeſſion of the effects, the only fund whence theſe debts are to be paid, is bound to pay them, as far as the effects go, deducting for himſelf the neceſſary expences of management. The heirs or executors however may always claim the benefit of an *inventory*, that they may not be bound further than they find the effects of the deceaſed. Nor need we feign any contracts

† *Negotii utilis geſtor.*

to explain the juſt grounds of theſe obligations, nor that the heir or executor is the ſame perſon with the deceaſed.

II. As to the ſecond claſs; where a man is bound by deriving to himſelf ſome advantage at the expence of others, who did not conſent that it ſhould be gratuitous: under this is included the obligation of thoſe on the other hand whoſe buſineſs was managed by others without commiſſion, and that of minors toward their guardians, to indemnify them, and compenſate their labours in all uſeful ſervices, and to ratify any contracts prudently made for their behoof; and refund any prudent expences in their education.

What parents expend in educating their own children, we conclude from the tender parental affection, that it is intended as a donation, when the parent has not declared the contrary. Nay parents are naturally bound to ſupport and educate their children ſuitably to their condition, and to convey to them at death what remains of their goods. But if a parent is in great ſtraits, or if any child has ſome other way obtained a plentiful fortune, a parent in theſe caſes may juſtly charge a child with the whole expence of its ſupport and education, and exact it for his own maintenance in old age, or to ſupport his other children.

III. BUT if one maintains and educates the child of another; there's no preſumption here that it was done as a donation; it is more preſumable that a debt is hereby conſtituted, to be diſcharged by the goods or future labours of this child, as far as the expence was truly made for the behoof of the child; but not what was intended for the ſplendor of his family who maintained it. Nay further, as generally all this expence upon an indigent orphan would be loſt entirely if it died before it were capable of labour; the maintainer might perhaps, in the rigour of juſtice, be allowed to charge ſomething more on account of this hazard; and by this

allowance men will be more encouraged to ſuch neceſſary care of indigent orphans. But then this hazard continually decreaſes as the child advances in years, and cannot increaſe conſiderably the charge, except for a few of the firſt years. An indigent orphan thus maintained is therefore in no worſe caſe than that of any indigent perſon who, without any fault of his, is involved in a great debt, from whom the creditor may juſtly demand payment by his labours, while the debtor retains all the other natural rights of mankind, and whenſoever either by his labours, (of which, he may juſtly chooſe to turn himſelf to ſuch as may be moſt beneficial to him, and ſooneſt diſcharge the debt), or by the liberality of any friend, he can diſcharge it, he can no longer be juſtly detained in ſervice. Now were an account of all the neceſſary charge of maintenance, and of the value of labour, juſtly ſtated, it would appear, that ſuch an orphan ſound in body and mind, could always fully diſcharge ſuch debt by his labours before he were thirty years of age: and conſequently that this can never be a foundation for perpetual hereditary ſlavery; even allowing an extraordinary intereſt were charged upon the expences becauſe of the hazard, as is done upon contracts of bottomry in trade. And yet this charge muſt appear pretty inhuman upon perſons in any grievous diſtreſs: nor can any diſtreſs be conceived greater than that of an indigent child deſtitute of all aid from its parents.

Under this branch too is included the obligation of him who, uſing the plea of *neceſſity*, (of which hereafter) has done damage to others; and of one who received what appeared due, but afterward it is found was not due; or what was paid upon a contract againſt which there lay a juſt exception making it void; or received any price, in conſideration of ſomething which is not paid or performed by him: who are all obliged to indemnify and reſtore.

When one partner in a company has preſerved or improved at his own expence any of the common goods of the company; the obligation of the other partners toward him is of the latter claſs; and his to them of the former.

The obligations contracted for us by others, if they are done by our commiſſion, are manifeſt contracts; if not they come under the caſe of *buſineſs managed without commiſſion* already mentioned.

CHAP. XV.

Of RIGHTS *ariſing from* DAMAGES *done, and the* RIGHTS *of* WAR.

FROM the former principles it is plain that each one is obliged to repair any damages he may have done to others, if they deſire it. But caſes often happen when a good man juſtly may, and ought to do, what may occaſion ſome damages to others; if, for inſtance, ſome goods of his of incomparably greater value cannot be preſerved, or ſome of the greateſt evils threatening him or his friends be prevented, otherways than by doing what may occaſion ſome ſmall loſs to others. He has a perfect right to act thus; and yet he always in ſuch caſes becomes liable to make good their loſſes ſuſtained for his ſafety or that of perſons dear to him. Since this is a ſacred ſocial principle of equity, that "no man for his own advantage ſhould impair the advantages of others; or if any neceſſity force him to it, that he make good their loſs as ſoon as poſſible."

The ſame is more manifeſt in damages done injuriouſly. Human ſociety cannot be maintained unleſs men are obliged to compenſate all ſuch damages. Laws prohibiting injuries would have no effect, if

after they were done, the injurious could enjoy their gain with impunity.

Nay the ſafety of ſociety further requires that the injuſt ſhould be reſtrained from injuries by the terror of ſevere puniſhment; leſt the good ſhould be continually expoſed as a prey to them. And therefore although God and nature require of us good-will, clemency and lenity, even toward the evil, yet ſurely they require a ſuperior degree of theſe affections toward the good. And the injuſt may be reſtrained by violence and puniſhments, and obliged to compenſate the injuries done and give ſecurity for their innocent behaviour for the future, without any malice or ill-will toward them; nay it is doing them rather a good office, to reſtrain them thus from further crimes.

II. BY damage is underſtood not only "the depriving men of their goods, and ſpoiling or detaining them injuriouſly; but any intercepting or preventing their natural or artificial profits; with all thoſe inconveniencies which enſue upon the firſt wrongs; all gain prevented, as well as loſſes occaſioned."

Whoever by himſelf or by others, whether by acting or omitting contrary to his duty, has occaſioned any damage, which otherways would not have happened, may be deemed an author of the injury. Such as only rejoice in the injuries done and praiſe them, may indeed ſhew ſuch perverſeneſs of temper as deſerves puniſhment; but as it cannot be diſcerned whether the ſame injuries might not have been done without ſuch congratulations or applauſes, men are not made liable to compenſation on theſe accounts alone. Where an injury has been done by many in concert, they are bound to compenſation jointly and ſeverally. But if one has compenſated the whole, the ſufferer can demand nothing further on this account from the reſt; but he who repaired the whole damage may oblige his partners to bear their ſhares with him. The caſe of puniſhments is quite different; for puniſhment may be juſtly inflicted on all for the common ſafety.

Among the authors of damage, he is deemed the principal, who having authority over others, commanded them to do it. He therefore is firſt to be called to account, if it can be done; if not, we may demand reparation from the reſt; ſince he could not by any orders of his give them any immunity from this obligation. And though the executors may be free from any guilt, having had the plea of neceſſity, in avoiding the far greater evils threatened them if they had not obeyed orders; yet they are notwithſtanding bound to make compenſation: ſince their innocent neighbours muſt not ſuffer, to free them from the evils they were threatened with.

III. If one without any fault, by mere accident does damage to another; he is not ſtrictly bound to repair it. Nay if one engaged in any important ſervices to the community, in any dangerous emergence, where it is ſcarce to be expected that men can uſe the greateſt caution, happens by ſome negligence to do damage to his neighbour, it ſhould be rather repaired by the community.

Damage done by hired ſervants without their maſter's orders, ſhould be repaired by themſelves. What is done by a ſlave binds the maſter to divide the price of the ſlave in the ſame manner as the effects of a bankrupt are divided among the creditors; computing on one hand the value of the ſlave, which is the claim of the maſter, and on the other that of the damage done which is the claim of the ſufferer; and in proportion to theſe two the price of the ſlave is to be divided. In the ſame manner the owner is bound to compenſate damage done by his cattle, without any fault or negligence of his. If civil laws * have been more rigid upon the owners, it has been with this view, that the owners may be made more careful in guarding well their ſlaves and cattle, which are kept for their own behoof.

* Exod. xxi. 28, 30. Inſtitutes. iv. title 8, 9.

If one without any malicious deſign has done damage, he ought to ſhew himſelf ready at firſt to do or perform whatever any wiſe arbiter ſhall judge reaſonable, and to declare the innocence of his deſigns. If one has had an evil intention, and truly repents afterwards of it; he ought alſo to offer compenſation, to beg pardon, and give whatever ſecurity againſt future injuries a prudent arbiter ſhall think ſufficient. No man truly repents of any injury he has done, nay he perſiſts in it, while he declines to do theſe things, and detains the gain of his injuſtice. But when the injurious offer all theſe things voluntarily, we are bound to be reconciled and to pardon them: which all of us ſhould do the more readily, and heartily, that each one ſo often needs to be pardoned, if not by his fellow-creatures, yet by our merciful Creator.

IV. WHEN one obſtinately perſiſts in his injuries and would not deſiſt from his deſigns upon admonition, nor repair damages done; or refuſes to perform what we have a perfect right to demand; not only our private intereſts, but the common intereſts, and ſafety of all requires, that the injuries intended ſhould be repelled by violence, and reparation of damage and whatever elſe is due to us by a perfect claim ſhould be obtained; and even ſome further evil inflicted on him, by the terror of which both he and others be reſtrained from the like practices.

This violent defence or proſecution of our rights is war. But as one grand view of conſtituting civil power was this, as it is known to all, that the controverſies of citizens ſhould be decided by impartial judges, and thus the miſchiefs prevented which might ariſe from mens redreſſing themſelves under freſh impreſſions of injuries; very different rules of violent defence or proſecution muſt obtain according as men are either in natural liberty or under civil government.

Wars are divided into *publick* and *private*. The former are ſuch as are undertaken by a *ſtate*, or in the name of a body of people: *private* wars are thoſe among private perſons. The publick wars are divided

into the *ſolemn*, or theſe authoriſed on both ſides by the ſupreme powers of ſtates, upon ſome ſpecious ſhews of right; and thoſe ſo authorized only on one ſide: ſuch as the wars made upon bands of pyrates or robbers, or citizens making inſurrections; or what are called *civil wars*, between different parties in the ſame ſtate contending about ſome rights of the people, or of the government.

We firſt treat of the *private wars* of men in natural liberty. And the ſame reaſonings hold in *publick wars*; ſince ſovereign ſtates and princes are with reſpect to each other in the ſame condition of natural liberty.

V. WE have already ſhewn that wars both publick and private are ſometimes lawful, nay neceſſary for the common ſafety. Nor do the ſcriptures prohibit them in all caſes: as they plainly authorized civil power, give to magiſtrates the * *power of the ſword*, and praiſe ſome eminent heroes in war.

In both kinds of war three points are to be ſettled: the *juſt cauſes*, the *term of commencing*, and the *term of ending them*, or the ſum of our demands in war. When we ſpeak of theſe three in the wars of particular perſons, they are to be differently determined according as the parties live in natural liberty or under civil government.

But we muſt always remember, that though we have received the very greateſt injuries from any perſon, yet we ought to maintain good-will toward him, and even deſire his happineſs, as far as it is conſiſtent with that of better men and of the community. All clemency conſiſtent with theſe ends, toward even the moſt injurious, is what every man's heart muſt approve. When therefore any injury is deſigned or done to us, we ſhould try firſt all gentler methods, either to pre-

* The *jus gladii* is well known to include both the power of capital puniſhment, and of defending a country by arms, among the Romans to whom the apoſtle writes, Ch. xiii. 4. See alſo Hebr. xi. 32, 33, 34. 1 Pet. ii. 13, 14.

vent it, or obtain reparation of damage and ſecurity for the future. Nor ſhould we judge that an unjuſt enemy has forfeited all his rights, or that every outrage againſt him is juſtifiable. That violence alone is juſt which is neceſſary, or naturally conducive, to repel the injury, repair the damage, or obtain ſecurity for the future. Any cruelty not requiſite for theſe ends is plainly criminal and deteſtable; as it occaſions grievous ſufferings to ſome of our fellows, without any neceſſity for the intereſts of others: and is a precedent to like cruelties on other occaſions, even toward thoſe who have a juſt cauſe in war.

VI. THE *juſt cauſes* of beginning war in natural liberty are any violation of a perfect right. There could be no ſecurity in life, none of our rights could be ſafe, were we prohibited all violent efforts againſt the injurious, and they allowed to paſs with impunity. By a frequent repetition of even ſmaller injuries the greateſt wealth muſt ſoon be exhauſted: and life muſt become intolerable to innocent men if they are thus expoſed to the perpetual inſults of their petulant or inſolent neighbours. Humanity may often perſuade a good man to overlook lighter injuries, which can eaſily be repaired: if eſpecially, they proceeded from ſome ſudden guſt of paſſion in men who in the main parts of their character are good, and will ſoon repent of it. Yet no man can juſtly claim ſuch patience toward himſelf from others. There are ſome more rare caſes in which perhaps it may be juſt to make war before any injury is done or attempted: but of theſe hereafter *.

When therefore any of our perfect rights are violated, either by deſtroying or damaging our goods, or refuſing what we have a perfect right to claim; or when a like injury is done to any innocent neighbour; it is lawful, nay often honourable by force to compel thoſe who oppoſe us or our neighbour in obtaining our rights, to deſiſt from theſe injuries, and to perform

* Book III. ix. 2.

whatever is due to us. We may ſeize the particular goods we have a claim upon; or if we cannot find them, ſeize any goods of the enemy ſufficient to compenſate all that is due to us. And in computing this, we ſhould include all our labours, and loſſes or expences occaſioned by the injury. Nay we may proceed further by way of puniſhment, or obtaining ſecurity for the future, as far as a wiſe arbiter will judge neceſſary: [but of this preſently].

In civil ſociety indeed, theſe injuries alone juſtify the violence of private perſons againſt any fellow-ſubject who is amenable to laws, which may occaſion an irreparable damage. The warding off, or the repairing of others ſhould be obtained in a more prudent way by the aid of the magiſtrate. But ſuch as can neither be prevented nor remedied this way, we juſtly may repel with violence. But if any one, who is as to right a citizen or ſubject, renounces this bond: or makes his attempts ſo ſecretly that there is ſmall hope of bringing him to juſtice: we have the ſame rights againſt him as if we were in natural liberty. * Such are all robbers and thieves in the night. Againſt other citizens our remedy muſt be obtained from judges or magiſtrates.

VII. THE term of commencing violence in liberty, is when one either by expreſs declaration of any hoſtile action has diſcovered a fixed purpoſe of hurting us or any innocent neighbour: and would not deſiſt upon admonition. We are not obliged to receive the firſt aſſault: as it may perhaps prove fatal to us: nor need we wait till the injury is executed: which may perhaps prove irreparable: and it is generally eaſier to prevent than to remedy. We may therefore juſtly prevent and ſurprize ſuch as have formed and declared ſufficiently their injurious deſigns of hoſtility.

The proper term of commencing in civil life any violence that may be dangerous to others, is when the aggreſſor has brought us into ſuch ſtraits that we

* Exod. xxii. 2, 3. and ſome fragments of the 12 tables.

can neither retire without danger, nor obtain any aids from magiſtrates or our fellow-citizens.

VIII. THE term or bounds beyond which we ought not to continue violence in natural liberty, are when the aggreſſor or the author of the injury either voluntarily repenting, or compelled by force, deſiſts from injuring, and offers compenſation of all damage done, and ſuch ſecurity for the future as any prudent arbiter ſhall judge neceſſary. If he obſtinately refuſes theſe things we may juſtly obtain them by force. Nay the common intereſt of mankind requires that ſuch as without any plauſible ſhew of right, have done groſs injuries, and given ſuch dangerous example to others, ſhould be puniſhed in ſuch a ſevere manner as may probably deter not only themſelves, but all others from like crimes.

The ſame reaſons which juſtify the inflicting of puniſhments in civil life, juſtify it alſo in natural liberty; though in this ſtate we cannot expect that puniſhments ſhall be ſo effectually executed, or ſo prudently regulated. Neither the grounds of puniſhments, nor the reaſons of inflicting them, preſuppoſe civil power in the inflicter, nor civil ſubjection in the ſufferer.

Under civil government ſubjects ought not to continue violence after they are ſecured from preſent danger. The reparation of injuries and precautions for the future are to be obtained by the ſentence of a judge, and not by the violence of the enraged parties. All juſt violence ſhould be with a view either to the defence of our rights, or to ſome publick advantage. What has not ſuch intention, and is accompanied with hatred of the perſon, and joy in his miſery, is that criminal *revenge*, which is condemned both by the natural and chriſtian laws.

And further, as rights reſpect not only our holding or poſſeſſing, but alſo our obtaining ſometimes from others ſome goods or ſervices: in natural liberty we may uſe violence in purſuit of what is due to us from others, when they refuſe to perform voluntarily what we juſtly demand. But in civil life all ſuch proſecution

of our rights ſhould be made by actions in law, either for debts, reparation of damages, or precautions againſt damages apprehended; and theſe matters decided by the wiſdom of magiſtrates and judges: as muſt appear from what was ſaid about the cauſes of war in natural liberty, and the ends of civil government.

IX. FROM theſe principles it muſt follow that ſuch duels as are often practiſed among us, where the challenger and the perſon challenged meet in a place appointed, intending the death of each other, or what may occaſion death, cannot be juſtified either in natural liberty or civil ſociety. Reaſon would always teach a far better method of defending and proſecuting our rights; firſt, by committing any diſputed point to arbiters in natural liberty: and if either ſide declined to ſubmit to them, the other ſhould obtain the aſſiſtance of ſuch neighbours as the equity of his cauſe or regard to the common ſafety can engage to his ſide, and make open war in proſecution of his right. As to any reproaches of contumelies, the duel is often a fooliſh, and often too cruel a method of refuting them. The fortune of the combat is often as blind and capricious as any: and death is too grievous a puniſhment for opprobrious words. If one has hurt the character of others, either by falſe reports, or even by divulging inhumanly, without any neceſſity, their ſecret vices; in natural liberty we may juſtly, with the aſſiſtance of friendly neighbours, inflict ſuch publick puniſhment as any wiſe arbitrators ſhall deem proper for the crime. And if in this ſtate any one has given full evidence of an hoſtile intention to deſtroy us: we ſhould rather take the ſafeſt way to prevent by ſurprize, or to reſtrain him, in ſuch manner as our own and the common ſafety requires Nay under civil government, we are not bound to avoid publick places, or neglect any buſineſs which requires our appearing abroad, becauſe we know that one deſigns to aſſault us: unleſs either humanity or a regard to our ſafety move us to it. And if we are unjuſtly attacked while we are employed in our own lawful buſineſs, we may juſtly defend ourſelves

even by killing the aggreſſor: and doing ſo is often a very uſeful ſervice to mankind. All this may be done without any concerted duels.

But if the legiſlator has been ſo negligent of a moſt important matter, as to appoint no ſuitable legal redreſs for the citizens when injured in their characters by calumnies or reproaches; and if that cuſtom prevails, which took its riſe in the moſt barbarous and ſuperſtitious ages, that a man is deemed infamous, and always expoſed to new inſults, and theſe generally approved too, if upon certain reproaches or contumelies uttered againſt him, he does not challenge the author of them: which will be the caſe too with one who declines to accept a challenge from any who imagine they are injured by him. The larger ſhare of this guilt is chargeable on the civil governors themſelves: tho' the parties are not excuſable, eſpecially the challenger. For a good man may generally find a better way of vindicating his character, and even of ſhewing his fortitude, if either there ariſe any publick wars, or if he is firſt attacked by violence.

There is indeed one caſe in which concerted duels may be lawful on one ſide *: if a publick enemy of our country, of ſuperior power, truſting to the valour of ſome champion on his ſide, offers to grant us reaſonable terms of peace only upon the event of this champion's being defeated by one of our ſide; or will have the controverſy decided according to the fate of ſuch a combat. 'Tis no doubt fooliſh and inhuman to decide controverſies this way, when it might be done by arbitration. But if a more potent enemy will not conſent to any other way; it is a glorious action on our ſide, if one to prevent much blood-ſhed expoſes himſelf for his country to this hazard, in which his country has better hopes of ſucceſs than any other way.

* Grotius D. Jure, B. &c. iii. 20, 43.

CHAP. XVI.

EXTRAORDINARY RIGHTS *in* CASES *of* NECESSITY, *and the* COMMON RIGHTS *of* MANKIND.

IT has been already frequently ſhewn that an immediate ſenſe generally points out and recommends our ſeveral duties; and that there are different degrees of them, in a certain ſubordination, ſome more, ſome leſs honourable; that the latter ſhould give place to the former, when they are inconſiſtent; and that the ſupreme beauty appeared in theſe affections of ſoul which are moſt extenſive, which ſhould therefore controul the narrower: and that in conſequence of this, all the rights of individuals, and all the ſpecial rules of life ſhould be poſtponed to the univerſal intereſt of all. Altho' therefore theſe practical concluſions called the *ſpecial laws* of nature, which we are ſacredly bound in all ordinary caſes to obſerve, point out what is almoſt continually the virtuous part; yet by an extraordinary change of circumſtances, it may become our duty to act in a different manner; and ſuch ſingular caſes are to be deemed excepted in theſe ſpecial laws. We never ſhould ſpeak thus, that in caſes of ſingular neceſſity, we may juſtly violate the law of nature, or act unjuſtly or vitiouſly: ſuch expreſſions are contradictions. But it is truly obeying the law to take the benefit of any exceptions appointed in it; or to follow the more ſacred law when it derogates any thing from one of leſs importance. Now of all the ſocial laws, that is the moſt ſacred, which prefers the general intereſt and ſafety to that of individuals or ſmall parties.

II. BUT as the ſenſe of every good man muſt ſhew it to be high of importance to preſerve the authority of all the ſpecial laws, and that they ſhould be religiouſly regarded; we cannot be juſtified in departing

from their appointment upon any light cauſes: the neceſſity muſt be great and manifeſt which will juſtify it. We muſt not only conſider cautiouſly what preſent advantages may enſue in this caſe from ſuch a ſingular ſtep; or what preſent inconveniences from following the ordinary law; but much more what greater and heavier and more general evils may follow from ſuch a liberty allowed to all. Let us take an example or two, which may illuſtrate other caſes. As the maintaining of veracity and faith in our converſation and dealings is of the higheſt importance to ſociety: as is alſo the maintaining the rights of property, and leaving to each one the free adminiſtration of his own, for the mutual confidence and ſecurity of men in ſociety: the cauſes muſt be of the higheſt nature, ſome terrible evils to be avoided or exceeding great advantages to be obtained which can be allowed to make exceptions from theſe important rules. Nor ought this plea of neceſſity to be extended to lighter matters: for we ſhould conſider all the conſequences, even of a remoter kind which muſt enſue upon diminiſhing the deep reverence men ſhould have for theſe laws. No caſes therefore but thoſe of the higheſt nature are to be deemed excepted; when evils ſuperior to all theſe evil conſequences are to be averted: and none will reckon among theſe, any ordinary ones of a lighter nature, unleſs he is plainly wicked and impious, void of any conſcience of duty.

It is to no purpoſe to argue here, that we are to do nothing vitious for any proſpects of advantage. In this all agree. But the queſtion is, whether ſuch extraordinary conduct be vitious in theſe circumſtances, or not? It ſhould not be matter of heſitation, whether we may abandon the conſcientious part for the advantageous: but whether ſome great utility to enſue do not make ſome extraordinary ſteps lawful or honourable? Nor is it more to the purpoſe to alledge, that we ſhould always adhere to the divine laws, and that we are no judges of future events, but ſhould commit them to providence. Such things are plead-

ed by ſome very good men, tho' not very acutely in this point. For the very queſtion is, are not theſe caſes to be deemed exceptions in the divine laws; and made known to us by the ſame uſe of reaſon by which the law itſelf is made known? If we are no competent judges of future tendencies, we are no judges about the ordinary natural laws; which are no otherwiſe diſcovered than by our reaſoning upon the tendencies of certain methods of action, as they appear conducive to the publick intereſt or detrimental: for no man can allege that our ſole rule of life are the impulſes of each particular paſſion which we may generally approve in ordinary caſes.

No doubt wicked ſelfiſh men devoted wholly to their own intereſts or pleaſures will abuſe this plea; but not without ſuch impiety and unfairneſs of mind as would break through any bonds of laws. The paſſionate and revengeful often abuſe the doctrine of ſelf-defence, and that about proſecuting the injurious: but we do not therefore quit this doctrine, and prohibit all violence in defence or proſecution of our rights. Nor ſhould we any more condemn all departure in ſingular caſes from what the ſpecial laws of nature require in ordinary ones. Men ſeem agreed that the common rules of property yield to ſome ſingular exigences. One may uſe or deſtroy the goods of another without his conſent, when it is neceſſary for the preſervation of multitudes, as in the lightening of ſhips in a ſtorm, or blowing up of a houſe to ſtop a raging fire. Nay ſome higher laws give way to ſingular neceſſities. The braveſt and beſt citizens are expoſed to certain death for their country, in ſervices where there can be no hopes of their eſcaping. By drawing a bridge or ſhutting the gates, by which all the citizens have a right to be protected, the braveſt men are ſometimes expoſed to the moſt cruel enemies. *Tullus Hoſtilius* is renowned to all ages for preſence of mind in delivering a falſe account, by which the Roman people were preſerved. But this doctrine ſo liable to miſapplication needs always the following cautions.

III. FIRST of all: the two general laws about loving God and our neighbour, or of promoting the general good of all, admit of no exceptions: nay in this latter are founded all the exceptions which lie againſt any of the more ſpecial laws. But the external acts of worſhip are not neceſſarily annexed to any one time, and therefore yield to urgent exigencies.

2. The more honourable any perſon's temper is, the leſs apt will he be to allow to himſelf exceptions for any ſmaller intereſt of his own, or to claim any privileges of neceſſity.

3. We muſt bring into account all the effects probably to enſue from any extraordinary ſteps, whether by natural conſequence, or from the unfairneſs or raſhneſs of others. Not that men are to be excluded from every right which unjuſt perſons may make a pretence of in improper caſes: but even theſe bad conſequences are to come into the general account, to prevent our allowing exceptions in any but the moſt weighty caſes. So that no man can plead exceptions in lighter ones, without the depravity of mind which would break any acknowledged law, without any ſuch pretence.

4. The more ſacred and important any law is, the greater muſt the cauſes be which can found any exception.

5. Cauſes of a publick nature are far more honourable than thoſe of a man's own advantage. A good man often may quit part of his own right; and 'tis often honourable not to take the advantages he might. But he is not thus maſter of the publick intereſts, and muſt act according to what the exigence of the times require.

6. No plea of neceſſity will juſtify a man in freeing himſelf from any threatening evil, by caſting the like or greater upon any innocent perſon. This is plainly not ſubſervient to any publick utility.

7. Whatever ſmaller damages we caſt on others who do not conſent to ſuffer them gratuitouſly, in order to free ourſelves from any great danger, we are

ſacredly bound to repair. To this right in natural liberty, of warding off ſome great danger by actions detrimental to others, there correſponds in civil ſociety an *eminent right in the ſupreme powers*, of which hereafter *.

IV. FROM the common bond of all with all, by which all mankind are conſtituted by nature one great ſociety, with ſome common laws binding them, there ariſe certain common rights, not ſpecially regarding the utility of any one, or a few, but that of all in general; which therefore every one as he has opportunity ſhould maintain and proſecute. Theſe rights as they obtain alſo in natural liberty, ſhould be conſidered previouſly to thoſe of civil ſocieties. We ſhall give a few inſtances, which will alſo lead us to others.

1. Mankind as a body, and each one as he has occaſion, have a right to hinder any one to quit life without a juſt cauſe, or thus deſert the duties incumbent on him. Suicide ſhould therefore be prevented, or ſuch ſelf-maiming as may make one unfit for the duties of life.

2. There is alſo a common right of all, to prevent certain vitious practices of moſt pernicious example, which yet cannot be ſaid to injure any one perſon more than another: ſuch as monſtrous luſts, procuring abortion, or any other practices which are hurtful to mankind in general.

3. We are likewiſe to hinder any man to deſtroy ſuch goods of his own as may be very uſeful in life, out of any caprice or ill-nature: nay they ſhould not be allowed to periſh of themſelves without being uſed.

4. There's alſo a like common right of one and all, to prevent injuries, and to puniſh ſuch as are done; ſo that by the terror of the puniſhment, others alſo may be reſtrained from like attempts.

5. Mankind have a right alſo to compel any perſon, who has diſcovered any ſecret of great uſe in life, to divulge it upon reaſonable compenſations, and not

* Book III. Ch. v. 4.

ſuffer it to periſh with himſelf; that ſuch as need it may alſo enjoy the benefit.

6. Mankind in general, and every ſociety, may juſtly require it of all ſuch as enjoy ordinary health and ſtrength, unleſs they otherways have a fund for their ſupport, that they ſhould maintain themſelves by their own labour, and not intercept the liberality or charity of good men; which is due only to the weak who cannot ſupport themſelves. Such ſlothful wretches are to be compelled to labour.

The inſtances we have given are rights of the perfect kind belonging to mankind as a body. Imperfect rights of this claſs anſwer to the general duties of humanity and benificence (above explained in treating of the nature of virtue) which muſt be left free to the honour and conſcience of men.

CHAP. XVII.

How RIGHTS *and* OBLIGATIONS *ceaſe: how* CONTROVERSIES *are to be decided in* NATURAL LIBERTY: *and the* RULES *of* INTERPRETATION.

OBLIGATIONS ceaſe by three ſeveral ways: by the *paying* or *performing* what was due; by *remiſſion* in favour of the debtor; and by the *failing of the condition*.

Payment may be made either by the debtor himſelf, or any commiſſioned by him, or acting in his name and for his behoof: but it muſt be at the time and place agreed on. Where payment is offered not by appointment of the debtor, nor for his behoof; the creditor is not bound to transfer his right againſt the

debtor to the perſon thus offering payment, who may have ſome malicious intention againſt the debtor. What is here ſaid relates only to the delivery of common goods or money, or performing common labours or ſervices, in which it is no matter to the creditor who pays him. The caſe is otherways in homages of honour, or ſuch labours as are valued on account of ſingular ingenuity. In theſe no ſubſtitution can be made without the conſent of the perſon to whom they are due.

In money, or goods only regarded by weights, meaſures, or quantities; if two perſons be mutually indebted to each other in equal ſums, and the days of payment on both ſides come, the debts mutually deſtroy each other: and this is peculiarly called *compenſation.* Nay though the ſums are not equal, yet the debts ſhould be deemed aboliſhed as far as the ſums concur, and the ſurplus only to remain due.

To the ſecond way, to wit, of ſome remiſſion; are reducible all theſe *tranſactions* or bargains agreed to for extinguiſhing diſputed claims: as alſo *delagations,* by which the debtor with conſent of the creditor tranſfers to him an equivalent debt due to himſelf: as alſo the forgiving of debts and accepting any thing in lieu of them; and laſtly, mutual diſſent of the parties, by which the mutual obligations of a bargain are taken away.

3. Under the head of the failure of the condition, is included the *perfidy* of one party in a bargain; which ſets the other free, if he chooſes it, rather than to compel the perfidious to performance: as alſo a *change* of *ſtate*; by which all obligations are made void which were plainly founded upon it: as alſo the *expiration of the time*; which takes away obligations which were to endure no longer: and laſtly, *death* takes away ſuch as only reſpected the perſons, and were not deſigned to ſubſiſt to the heirs of the creditor, or affect the heirs of the debtor: and theſe points are generally known from the nature of the buſineſs, or the terms of the contract.

II. IN natural liberty controverſies are beſt decided by friendly conferences of the parties, or the interpoſal of common friends; or by an abſolute *compromiſe* or ſubmiſſion to arbiters of approved characters; and this either as to the ſtrict point of right, or as to the equitable and humane part on both ſides. Every good man would always chooſe to make ſubmiſſions of this latter ſort, and not inſiſt upon the ſtricteſt point of right.

The proper arbiters are perſons of wiſdom, under no ſpecial attachment to either ſide, and who can gain nothing by the deciſion of the cauſe in favour of either party. Such men influenced by no intereſt or paſſion, though they be neither wiſer nor better men than the parties contending, yet will more eaſily diſcern what is juſt and equitable. The parties are bound to ſtand to their deciſion, unleſs they find evidence of corruption, ſuch as ſome ſecret contract with one party; or unleſs there be ſuch manifeſt iniquity in the deciſion as muſt plainly evidence ſome fraud or unfairneſs. But if it is only ſome ſmaller inequality or miſtake in the deciſion, upon ſome ſhew of right, by which one party thinks he is wronged, he is notwithſtanding bound to ſubmit to the award.

The arbiters ſhould proceed as judges do, to find out the truth by the acknowledgments of the parties, or by ſigned deeds, or other ſuch documents: and next to cite witneſſes, and interrogate them upon oath; regarding always this, whether the witneſſes be not engaged by intereſt on one ſide; and they ſhould demand two at leaſt to proceed upon. For though the credibility does not at all increaſe in proportion to the number of witneſſes, and ſometimes the teſtimony of one wiſe honeſt man gives full ſatisfaction; yet it would be dangerous to proceed upon the teſtimony of one: as a perſon of great hypocriſy and art, and preſence of mind, may contrive ſuch a conſiſtent ſtory, that no interrogatories put to him can detect the falſhood of it, or make him contradict himſelf. But when two or more witneſſes are ſeparately examined,

without hearing each other's teſtimonies, about all ſuch circumſtances as might have been obſerved by perſons really preſent, (of which a vaſt multitude may occur to a ſagacious judge); if they either frequently contradict each other; or both always remember the ſame circumſtances, and both always pretend to have forgot or overlooked the ſame circumſtances, they give plain evidence of a concerted fraud. [A compleat conſiſtency therefore of two thus examined, gives abundant evidence.]

III. FOR diſcovering the true intent and meaning of promiſes, contracts, teſtaments, and written laws, the proper rules of interpretation are often uſeful. But they belong rather to the art of criticiſm than to morals; as they are not peculiar to theſe matters.

1. We muſt ſtill remember that ſuch as profeſs to contract with others, and uſe ſuch ſigns as commonly expreſs contracting, are to be deemed bound, whatever way their mind was then employed: nor otherwiſe could there be any faith in commerce.

2. The ſenſe of common *popular words* is to be determined by cuſtom, without regard to original meanings or etymologies; unleſs there appears evidence that they were taken in an unuſual ſenſe.

3. *Terms of art* are to be underſtood according to the definitions of the artiſts.

4. Where the different parts of any deed relate to the ſame thing; the ambiguous or obſcure are to be cleared up by the more plain or diſtinct.

5. If words taken in their ſimple and unfigured ſenſe import ſomething contradictory and abſurd, but not when interpreted as figurative; they are to be deemed figurative.

6. In deeds which convey no right in their prior parts to ſuch as do not alſo conſent to the ſubſequent; the ſubſequent limit the preceding. This holds in the different parts of teſtaments, and in different deeds made between the ſame parties.

7. There are alſo juſt conjectures of interpretation to be derived from the *ſubject matter*, the *circumſtances*,

effects, or *conſequents*. For that is probably the true interpretation which ſuits the ſubject matter and circumſtances, or which involves no abſurd conſequences.

8. Contracts are beſt explained from knowing the views of the parties; and laws in like manner from the reaſon or deſign of them.

9. We are alſo to regard whether the matter be of a *deſireable* or favourable nature, or on the contrary undeſireable or odious; for accordingly we give a larger or more confined ſenſe to the words.

IV. But where all or any of the contending parties in natural liberty, truſting to their own ſtrength, and each dreading the intereſt or art of his adverſaries in influencing any arbiters they might chooſe, declines to compromiſe; there remains no other remedy than that each defender proſecute his right by violence, with what aid he can get from his neighbours: and by this means multitudes muſt often be involved in great inconveniences and dangers. Now it is probable, that in order to avoid theſe miſchiefs, and to get large ſocieties regulated by the authority of a few of the wiſer ſort, in the deciſion of their debates, and the exerting their united force for the common ſafety of all, men have had recourſe to a political union and a civil power.

THE

ELEMENTS

OF

Moral Philoſophy.

BOOK III.

THE PRINCIPLES OF OECONOMICKS AND POLITICKS.

CHAP. I.

CONCERNING MARRIAGE.

WE have in the former book treated of the rights and obligations of that *ſtate of liberty conſtituted by nature*. We proceed to the *adventitious ſtates*, founded upon ſome human deed or inſtitution.

Theſe ſtates are either *domeſtick*, regarding the utility of a few, ſo many only as can ſubſiſt in one family; or *publick*, reſpecting the utility of a whole nation or ſtate, or even of many ſtates.

Oeconomicks treat of the rights and obligations in a family; the chief points of which are delivered in theſe firſt three chapters. There are many other adventitious ſtates of perſons united in ſome narrower

communities or corporations included within ſome political body, and ſubject to it; of which there are innumerable multitudes, which are not under the cognizance of philoſophy.

II. ALL kinds of terreſtrial animals muſt have ſubſiſted only for one age, if nature had not conſulted their preſervation by a difference of ſex, a deſire of offſpring, and a tender care of it till it can ſubſiſt by itſelf. In the brute animals nature has done little more; as their young can be ſufficiently preſerved and reared by the care of their dams, ſince they need ſcarce any inſtruction for their ſimple ways of life. Nature finds all the cloathing and armour they need; and the earth of itſelf ſends up their food in abundance. But for the improvement and even preſervation of human life a multitude of arts and inventions are neceſſary; as their bodies are more delicate, needing nicer food, and clothing, and other care; and their minds capable of many delightful arts. Their offſpring therefore, by the wiſe order of nature, continues far longer tender and infirm, needing the conſtant care of the adult; that thus they may be more eaſily governed and inſtructed in the various arts of life, before they acquire untractable ſtrength.

Now as the mothers are quite inſufficient alone for this neceſſary and laborious taſk, which nature alſo has plainly enjoined on both the parents by implanting in both that ſtrong parental affection; both parents are bound to concur in it, with joint labour, and united cares for a great ſhare of their lives: and this can never be tolerable to them unleſs they are previouſly united in love and ſtable friendſhip: as new children alſo muſt be coming into life, prolonging this joint charge. To engage mankind more chearfully in this laborious ſervice, nature has implanted vehement affections between the ſexes; excited not ſo much by views of brutal pleaſure, as by ſome appearances of virtues, diſplayed in their behaviour, and even by their very form and countenances. Theſe ſtrong impulſes plainly ſhew it to be the intention of

nature that human offſpring ſhould be propagated only by parents firſt united in ſtable friendſhip, and in a firm covenant about perpetual cohabitation and joint care of their common children. For all true friendſhip aims at perpetuity: there is no friendſhip in a bond only for a fixed term of years, or in one depending upon certain events which the utmoſt fidelity of the parties cannot enſure.

III. THIS natural love of the ſexes, and equally natural love of offſpring, ſhew that *Plato* and ſome other excellent writers are juſtly cenſurable, for departing too audaciouſly from nature, in appointing their ſtates to be ſupplied in new ſubjects by children unknown to both the parents; and this in order to prevent ſome evils * which may be prevented in a much more eaſy and gentle manner. For never could any laws or inſtitutions have ſuch influence, that perſons quite uncertain about their offſpring, and hence not influenced by the natural affection, would take a proper care of the young. Or if they were compelled effectually, the labour would be moſt diſagreeable to them, which to parents aſſured of their own offſpring is light and delightful. And further, while their offſpring is unknown, men want one of the ſtrongeſt incitements to all diligence and induſtry. Nay further, Plato's ſcheme, without any ſufficient reaſon or criterion that one can underſtand, is only calculated for the happineſs of the few finer ſpirits; while the plurality are ſubjected to a miſerable ſlavery.

Nay further; theſe inconveniences he dreads ſo much from each one's knowing his own children, might be prevented another way, by proper laws and publick inſtitutions about education, teſtaments, and ſucceſſions. Nor can we aſcribe the factions which often

[* See Plato's ſcheme in his books *de Republica*. The evils avoided by his ſcheme, are avarice and injuſtice; vaſt eſtates, and the attendant power and influence, deſcending to worthleſs heirs; the employing mens affections upon the contracted ſyſtem of a family or two, which otherwiſe might be extended to the whole ſtate: and thence many diſſentions and factions.

tear ſtates to pieces to our knowing the ties of blood; as one may eaſily ſee in all nations. He ſhould alſo have prevented all particular friendſhips; or ſhewn that men have much ſuperior ſagacity in the choice of friends or of ſtate parties, than he allows them about the education of children, or the love of kinſmen, or in making their teſtaments.

As to the apprehenſion of danger from this, that many very weak men by means of the tender parental affections come into great wealth, 'tis without ground. The offspring of the weak is frequently very vigorous; and that of the vigorous weak, both in mind and body. Nor is it neceſſary for any ſtate that all its members ſhould be either robuſt or ingenious. And ſometimes the fineſt genius is lodged in an infirm body.

IV. WE muſt not therefore through fear of a few inconveniences counteract what nature has ſo ſtrongly recommended: but rather look upon all ſuch deductions of reaſon, as ſhew how a faithful friendſhip may be maintained in wedlock, for the proper education of offspring, as ſo many ſacred laws of nature. Men ought to reſtrain not only all monſtrous luſts, as outrages againſt God and nature, but alſo all diſſolute procreation without any proper covenant about a friendly ſociety for life. For if ſuch indulgence were allowed to all, it muſt deſtroy both the bodies and minds of the youth, produce a race deſtitute of all paternal aſſiſtance, and expoſe the incautious mothers to infamy, poverty and a perpetual courſe of debauchery, without any hopes of ever attaining any reputable ſtate in life. It were to be wiſhed that an equal infamy attended the other ſex, the common authors of or ſolicitors to ſuch vices.

Such adult perſons as have a ſufficient ſtock both of wealth to ſupport a family in their condition of life, and of prudence to govern it, ſeem obliged to marry, unleſs they are hindered by ſome important offices inconſiſtent with the cares of a family. It would be diſhonourable for one without a weighty cauſe to decline

his ſhare of the cares and ſervices requiſite for the preſervation of the human race.

V. THE chief articles in this covenant are theſe: 1. "That the woman be faithful to the man in coha-"biting with no other;" as it muſt be the greateſt injury to impoſe upon him an adulterous offspring, for heirs to his fortune, and objects of that affection which is naturally due only to his own.

2. The ſecond is, "that the huſband ſhould be "equally faithful to the wife." For it is a natural iniquity that the wife's conjugal affection, and all her cares and fortune, ſhould be devoted to one man and his offspring; while the affections of the huſband are allowed to be intercepted by, or diſperſed among ſeveral women and their children, and along with it his fortune.

Simultaneous polygamy is not to be allowed to men, not only on account of the inequality or iniquity now mentioned, but becauſe it alſo deſtroys all friendſhip in marriage; muſt be the cauſe of perpetual contentions; muſt tempt women ſo injuriouſly treated into adulteries; muſt corrupt the minds of men with wandering luſt, deſtroying their natural affection to their children; and muſt occaſion to ſome an offspring too numerous, which therefore will be neglected, and be void of all ſenſe of duty to ſuch diſſolute parents. And further, ſince Providence preſerves the numbers of males at leaſt equal to that of females, if it is allowed to men to have more wives at once, many muſt be excluded altogether from marriage or having offspring; and thus be free from theſe tender bonds which chiefly civilize and unite men in ſociety: nor does polygamy contribute to make nations more populous, but has rather the contrary effect.

3. The third article is that perſons married ſhould, by a perpetual union of intereſts and purſuits, conſult the proſperity of their family, and chiefly the right education of their common children, and the improving their condition as they have opportunity.

That we may be the better fitted for obſerving theſe articles, from our infancy we ſhould be enured to modeſty and chaſtity; an high ſenſe of which is deeply fixed by nature in the fineſt ſpirits. All obſcenity and laſciviouſneſs in diſcourſe or behaviour is deteſtable; as it relaxes theſe bonds of modeſty by which the young, and women eſpecially, are reſtrained from expoſing themſelves to all infamy and miſery.

4. The fourth article is, "that the bond be perpetual, to end only by death." This is neceſſary to make marriage a ſtate of friendſhip; as alſo generally for the right education of children, who are ſucceſſively born to us for a conſiderable part of life; and this laſting duty or charge is impoſed by nature equally on both parents. It would alſo be moſt inhuman to divorce or ſeparate from a faithful and affectionate conſort for any cauſes which include no moral turpitude; ſuch as barrenneſs, or infirmity of body; or any mournful accident which no mortal could prevent, and which muſt be equally afflicting to the perſon abandoned, the death of all the common children.

As to any proper power, or right of commanding, veſted in either of the parties, it ſeems oppoſite to that tender affection the ſpring of marriage; which rather points out an equal friendly ſociety. Nor ſeems there any other reaſon for giving any ſuperiority to the huſbands, except this, that men are generally more fit for managing the more important buſineſs of the family, to which the leſs important within doors ſhould give place.

The four articles above mentioned ſeem ſo neceſſary, that no covenants of the parties in oppoſition to them can be valid *. Marriage therefore may be de-

* If any one in this matter inſiſts that ſimultaneous polygamy was allowed in ſome civilized nations; let him remember that ſo were alſo human ſacrifices, and a certain ſort of ſlavery manifeſtly iniquitous and inhuman, in far more civilized nations. And though a plurality of wives was allowed by the Jewiſh law; yet a far purer inſtitution informs us, that it was permitted for *the hardneſs of their hearts*;

fined "a covenant between a man and woman about "perpetual faithful cohabitation and joint care of "their common offspring."

VI. THE *impediments* of marriage are either ſuch as are deemed to make the contract from the firſt void; or, afterwards make void a valid cantract. Of the former claſs ſome are natural and ſome moral.

Among the natural impediments, beſide a manifeſt bodily weakneſs rendering one unfit for marriage, may be reckoned alſo ſome grievous diſorders and miſerable incurable diſeaſes, inconſiſtent with a friendly ſociety or excluding all hopes of offspring that can live. Such as idiotiſm, and perpetual madneſs, leproſy, and ſome other diſeaſes. Very advanced years of either ſides may juſtly be deemed to make void a marriage with one in the bloom of life. But if a couple both well advanced in years, covenant about a conſtant cohabitation, there is nothing blameable in it. A third impediment is, when either party is ſo young that they cannot have attained that uſe of reaſon which is neceſſary to their binding themſelves by any contract. For it would be moſt abſurd that perſons who becauſe of their immature years are deemed incapable of binding themſelves in any other matter, yet ſhould be deemed capable of it in this, which is far more important than any other, and requires greater judgment.

The moral impediments which make void the contract from the firſt, are *prior contracts* with others, and *too near conſanguinity* or *affinity*.

As to the former: if two perſons both apprized of the prior contract with another join in marriage, the marriage ſhould be deemed entirely void; and both parties ſhould be ſeverely puniſhed. Where one of the

or only allowed to paſs with impunity, but not approved. The *concubinage* both in Heathen Rome and under the Chriſtian emperors was allowed only to ſuch as had no wives, and was a marriage naturally lawful. See *Heineccius' Antiquities*, in the appendix to lib. i. c. 38. and the following ones.

parties was not apprized of the contract; the caſe of this perſon is ſo favourable, that the marriage confirmed by cohabitation ſhould not be made void unleſs at the deſire of this perſon: even as in other contracts, ſubſequent real rights take place againſt prior perſonal ones: but the guilty party deſerves ſevere puniſhment. And that there may be no room for ſuch frauds even after complete marriages, every ſtate ſhould take care that all marriages intended ſhould be previouſly adverti ſed, and ſuch as are celebrated alſo be divulged in the moſt publick manner.

As to *conſanguinity* invalidating marriages, there are higher debates. Among parents and children in the *direct line*, the law of nature ſeems to prohibit all marriages; not only on account of a conſiderable difference of years, but becauſe the conjugal affection and intimacy ſeems quite inconſiſtent with that reverence implanted by nature toward parents and confirmed by education. As to the inter-marriages of kindred in the *tranſverſe line*, or collaterals, the natural reaſons offered by ingenious men do not ſeem concluſive to prove ſuch marriages pernicious or impious. But as we find that many nations who derived nothing from the * Jewiſh laws, held the ſame marriages of collaterals inceſtuous and impure; it is not improbable that they have been prohibited by ſome poſitive divine law in the earlier ages of the world; and that ſome veſtiges of this law were preſerved in many nations. The intention of this law has probably been to diffuſe further among many families that good-will and endearment which frequently ariſes from conſanguinity and affinity. The Deity may alſo have had in view ſome other advantages to human offſpring to ariſe from ſuch intermixtures of different families.

By the Roman law, and the cuſtoms of all Chriſtians, marriage is prohibited to all within the *fourth*

* See Levit. xviii. and Tacitus's Annals. 12. 5. Digeſt. 33. t. 2. l. 17. and laſt and Lib. 39. l. 53. and Grotius. ii. 5. 12.

degree. And the degrees are thus computed. Perſons a-kin have had ſome common parent: and as many generations as have intervened on both ſides from this ſtock, ſo many are the degrees. In like manner a man is prohibited to marry any ſuch kinſwoman of his former wife, as of his own; to wit, within the fourth degree. The canon law retaining the ſame words, has yet extended the prohibitions much further; as it computes the degrees according to the generations in one of the lines only; and by the longer of the two, if they are unequal; and thus prohibits all marriages within the ſeventh degree of the civil law.

VII. THE cauſes which break off a valid marriage are, any violation of the eſſential articles: ſuch as adultery, obſtinate deſertion, capital enmity or hatred, and ſuch groſs outrages as take away all hopes of any friendly ſociety for the future. When a marriage is diſſolved for ſuch cauſes, the guilty party and the aſſociate in the crime deſerve the higheſt puniſhments; as theſe injuries in marriage do greater miſchief, and cauſe deeper diſtreſs than ſtealing or robbery, for which capital puniſhments are inflicted. The innocent party ſhould be allowed to marry again: for it would be ſtrangely inhuman becauſe one has ſuffered injury, that the law ſhould inflict another hardſhip, by depriving them of a new marriage and offspring. Nay if the guilty parties are allowed to live, they ſhould not be hindered from marrying, except it be with the partners of their guilt. They ſhould rather be obliged to marry perſons equally infamous with themſelves.

The prohibition in the goſpel of all divorces except in the caſe of adultery * ſeem *elliptical*, as thoſe which prohibit all uſe of oaths. They only condemn all the cauſes aſſigned by the Jewiſh doctors, except that one. The apoſtle Paul † expreſsly allows another, and that for manifeſt reaſon, to wit, obſtinate deſertion.

* Matth. v. 32. Luke xvi. 18.
† 1 Corinth. vii. 15.

The duties of perſons married conſiſt chiefly in a faithful and conſtant affection, ſweetneſs of manners, and prudent care of their families; and to this purpoſe it is neceſſary they improve their minds in all virtue; eſpecially in meekneſs and calmneſs of temper; that they may reſtrain ſuch paſſions as their family affairs will be apt to excite. Without theſe virtues a continual ſociety and community of all things can never be tolerable. As to the ways of improving their fortunes, this they muſt learn from other arts, and not from philoſophy.

CHAP. II.

The DUTIES *of* PARENTS *and* CHILDREN.

AS human offspring remains for a long time infirm, incapable of preſerving itſelf, needing the conſtant care of others, both for preſervation and inſtruction in theſe arts and manners which are neceſſary for life; nature has plainly impoſed this charge upon the parents by that ſingular affection implanted in them. Nature therefore muſt have deſigned that parents ſhould aſſume all the power which is requiſite for the diſcharge of this truſt, and ſubjected children to it; while at the ſame time by this tender affection ſufficient precaution is taken for the childrens obtaining their liberty as ſoon as they can ſafely enjoy it; ſince without it they cannot be happy, which is the point that parents are moſt ſolicitous about.

The want of judgment in our immature years, and the tender parental affection, the two only founda-

tions of parental power, ſhew that it cannot be perpetual or during life; but muſt expire as ſoon as children grow up to mature ſtrength of body and mind. And yet the parental affection will always remain, exciting parents to all kind offices, when their children need their aſſiſtance or counſel.

The ſame conſiderations ſhew that this power cannot be extended to any of the more grievous puniſhments, ſuch as cannot be requiſite for education in ſuch tender years: much leſs can extend to life or liberty. A parent has no right to ſell his child to perpetual ſlavery, or to lay any burden upon it beyond the value of the neceſſary and prudent expences of its education.

II. THIS parental power belongs alike to both parents, only that in domeſtick affairs the power of the father is a little ſuperior. But if he is dead or abſent, it is wholly veſted in the mother.

It is trifling to found this power merely in generation *, or to follow ſome law maxims about the goods formed by our labour out of our own materials, or other acceſſions of things animate or inanimate, which have no uſe of reaſon or no capacity of holding any rights. Both the bodies and ſouls of children are formed by the Divine power, that they may, as they grow up, arrive at the ſame condition of life, and an equality of right with ourſelves, though for ſome time they muſt be governed by the wiſdom of others. For children may have property, and other rights, quite independent of their parents; who ſeem to have no other power over any goods conveyed to their children by others than that of tutors or curators. Whatever parents abandon this guardianſhip of their children committed to them by nature, either by expoſing or intirely neglecting them, forfeit alſo the parental power connected with it: and any one ac-

* This is deſigned againſt *Hobbes* and *Filmer*.

quires the whole parental power who takes care of ſuch children.

Parents are moſt ſacredly obliged to provide for their children all the neceſſaries of life, and even to improve their condition as much as they can; and above all to form their manners to all virtue by inſtruction and example: for without this their lives muſt be miſerable and infamous, though in the greateſt affluence.

What parents expend on children who have no ſtock of their own, is juſtly preſumed to be donation: and it would be inhuman in parents, who are not in great diſtreſs, to charge food, clothing, and neceſſary education, as a debt upon their own children. But if the parents are in great diſtreſs, or if any one of their children have a ſtock derived from ſome other friend, parents may juſtly ſtate ſuch an account with their children, and exact payment from them of all the prudent expences made upon their education; and children in this caſe are bound to make ſuch payment either by their labours or otherwiſe. Although therefore from the common affections of parents we juſtly conclude, that their private fortunes are acquired for their children as well as themſelves; whence appears the right of children to ſucceed to the inheritances of their parents; yet children are not to look upon themſelves as leſs bound to gratitude on this account: nay they are rather the more bound. For the more firm and diſintereſted any affection is, and the more deeply it is rooted in the perſon's nature, the more it is to be valued, and the ſtronger is our obligation to gratitude.

III. PARENTS may acquire by civil law a further power over their children, as the law commits power to any magiſtrates. For civil power having different foundations and greater ends, extends beyond the parental. And children, as they have from their birth enjoyed protection and the other advantages of a civilized life in a ſociety conſtituted for the good of all, are plainly bound to perform to the community on

their part* all that is due from good citizens; and particularly to preſerve that conſtitution, and tranſmit the ſame to future ages. Minors therefore may juſtly be delivered as hoſtages, or be obliged to military ſervices of the greateſt danger in great exigencies.

IV. CHILDREN even when adult owe all reverence and gratitude to their parents, not only in return for benefits received, which ſcarce any duty of theirs can ſufficiently compenſate; but alſo out of regard to God, by whoſe providence it was ordered, that we deſcended from ſuch parents, united with them in ties of blood and natural affection, and an habitual reverence from our cradles. They ought therefore to bear with patience any weakneſſes or froward humours of aged parents, as the parents long bore their childiſh follies. Particularly it is the duty of children to conſult the ſatisfaction of their parents in entering into marriage; ſince the parent is alſo deeply concerned in this important ſtep; by which their children enter into a ſtrict ſociety for life with others, from whence muſt proceed grandchildren to their parents, to ſucceed ſometimes to their names and fortunes, and always to their tendereſt affections.

After the proper parental power expires, there often ſucceeds that of the *head of a family*; which is of ſuch extent as the domeſticks make it by their own conſent expreſs or tacit, by voluntarily continuing in, or entering into, a family, where they knew ſuch a degree of power was aſſume[d] ſuch

* See Book II. ch. xiv. 2. of obligations reſembling thoſe from contracts: and the following ch. v. 2.

CHAP. III.

The RIGHTS *of* MASTERS *and* SERVANTS.

WHEN mankind were conſiderably multiplied, there would be many who had no other fund of ſupport than their labours; and others of greater opulence, who for their eaſe would need much of the labours and ſervices of others. And hence the relation of maſter and ſervant would ariſe, founded on ſome contract. Nor is it of conſequence whether ſuch contracts at firſt were for life, or only for a certain term: ſince excepting the point of duration, the rights and obligations were the very ſame. The points following are of more conſequence.

1. The labours of any perſon ſound in body and mind, are of much more value than the bare ſimple food and clothing of a ſervant; as we plainly ſee that ſuch can purchaſe all this by their labours, and ſomething further for the ſupport of a family, and even for ſome pleaſure and ornament. If any one therefore has incautiouſly inſiſted for no more in his contract; yet as the contract is plainly onerous, he has a right to have this inequality [illegible]d *.

2. Where the labours were not ſpecified, the ſervant is deemed to have engaged only for ſuch as men of humanity in ſuch ſtations commonly exact from their ſervants; and to have ſubmitted only to ſuch coercion of his maſter as is neceſſary for the good order of a family, if he ſhould neglect his work or miſbehave. But he retains all other natural or acquired rights.

3. If indeed the cuſtom is known to have obtained, that heads of families aſſume a ſort of civil power

* Book II. xii. 4.

over their domeſticks; the ſervant is juſtly deemed to have conſented to this alſo, as far as it is managed conſiſtently with humanity. The ſervant is bound to perform his work; but retains all the rights of ſubjects under civil government: particularly all ſuch as are naturally unalienable: and may juſtly defend them, even by violence, againſt any invaſions of them by his maſter.

4. Where the ſervices have been ſpecified in the contract, the ſervant is bound to no other. Nay though they were not, and the contract was prepetual or for life, yet the maſter connot transfer him to another without his own conſent: ſince it is of high importance to the ſervant what maſter he is ſubjected to, and in what family. And for the children of ſuch ſervants they are all born free.

II. HITHERTO we have treated of ſervice founded on contract. But there is a far worſe kind, to wit, of thoſe who for ſome great damage done, which they can no other way repair; or on account of ſome great crime, are adjudged by way of puniſhment unto perpetual labours to others.

And yet even in theſe caſes, they do not loſe all the rights of mankind, but only ſuch as are naturally fit to compenſate the damage, or are neceſſary to give ſecurity to the publick againſt like injuries for the future. If the lives even of the worſt criminals are ſpared, after they have endured all ſuch publick puniſhments as the ſafety of ſociety may require, it is unjuſt to treat them with any further cruelty; provided they are willing to perform the labours they are condemned to. And they have a right to defend themſelves even by violence, againſt new injuries, or violations of any rights ſtill remaining to them. But as ſlavery of this kind is conſtituted ſolely for the behoof of others; the maſter may transfer to another ſuch a ſlave without his own conſent. But no cauſe whatſoever can degrade a rational creature from the claſs of men into that of brutes or inanimate things, ſo as to become wholly the property of another, without any rights of his own.

Nations in other reſpects not barbarous, condemned all captives in war into this moſt miſerable condition; eſtabliſhing an inhuman law even againſt themſelves, and ſtrangely conſpiring to ſubject themſelves and their poſterity, upon many very poſſible contingencies, to the moſt miſerable and ignominious treatment. Upon which ſubject the following maxims ſeem juſt.

1. Whoever makes war without a juſt cauſe acquires no right by ſuch violence, over either perſons or goods taken, which he can uſe with a good conſcience, though he may detain them with external impunity, as we ſhall ſhew hereafter *.

2. One who has a juſt cauſe, yet ſhould ſet juſt bound to his demands; nor can he demand any thing from the conquered except either under the name of *puniſhment, reparation of damage* done, or *precaution* againſt future injuries †.

3. None are puniſhable but ſuch as either by ſome action or omiſſion, contrary to their duty, have occaſioned and contributed toward theſe injuries done to us by the war. And it is plain, this is ſeldom ever the caſe of the far greater part of the adult ſubjects of any ſtate, who are capable of a ſhare in publick affairs; not to ſpeak of women and children, who make three-fourths of every people, and ought to be deemed joint proprietors with the heads of families in their private properties. And though all heads of families paid tributes toward maintaining the war; this cannot be deemed a crime in them, as they were under the immediate diſtreſs of their governors, who would otherways have levied theſe taxes by force, and puniſhed the refractory. Grant they had conſented to the war,

* See the following ch. ix. 4.

† See Book II. xv. 5. 8. On this ſubject of ſlavery many juſt reaſonings are to be found in Mr. *Locke*'s 2d. book on government; and Mr. *Carmichael's* notes on *Puffendorf*, Book II. ch. iv.

following ſome ſpecious reaſons publiſhed by thei governors: their ignorance generally was invincible: nor was their conſent of ſuch importance as to cauſe the war, nor would their diſſent have prevented it. Nor can we ever ſuppoſe that any political union can transfer the guilt of one perſon upon another who did not concur with him.

4. Nay the very ſoldiers, all ſuch at leaſt as had no ſhare of or influence in the publick councils, as they enliſted upon preſumption of being employed only in juſt cauſes, or perſuaded by ſuch reaſons as their governors publiſh: they are excuſable entirely, both on account of ignorance and neceſſity. To men once enliſted it is a capital crime to diſobey orders. It muſt therefore be exceedingly inhuman to inflict any thing ſevere upon them by way of puniſhment, provided we can be ſecured againſt further dangers from them: and this we always may be from captives, by keeping them in our own country, and mixing them with our citizens or our colonies, without depriving them any way of their liberty. All this not only humanity will recommend, but a conſideration of the uncertain accidents of war, and the inconſtancy of fortune.

5. Under pretence of repairing damages, the conqueror can demand nothing from the innocent citizens, except upon the ſame grounds that one demands it for damage done by another's ſlave or cattle, to wit, this, "that, whoever contrives or procures any thing for "his own utility, by which others without their fault "receive hurt, is bound either to repair the damage, "or deliver up the goods, or contrivance whatever it "was, to the perſon injured." The conqueror may therefore juſtly demand from the conquered citizens, that they abandon their unjuſt governors the cauſes of the war; or that they oblige theſe governors to repair the damages; or that they repair them themſelves: and theſe three ſhould be left to their choice. This holds moſt evidently as to theſe firſt citizens who at firſt conſtituted the government: or thoſe who have great power in the ſtate, by whoſe council the war

was undertaken; or who have it in their power to reſtrain their princes in their unjuſt deſigns. As to others who are of no weight in publick affairs, their plea againſt even compenſating of damages is more favourable.

6. But as ſoon as the defeated have repaired all damages, or the conqueror has obtained reparation to himſelf by force and military execution; and has alſo obtained ſecurity againſt future injuries, ſuch as a wiſe arbiter judges ſufficient, he has no further demand upon the innocent citizens. Now he may obtain all this in a much eaſier, and more merciful way, without depriving the innocent citizens of their liberty. The governors are in the firſt place bound to repair all damages, and the citizens only in the ſecond place when their governors cannot do it, or decline it.

7. The children of ſlaves of any ſort are all born free *, as we ſhewed above.

8. Whoever purchaſes a perſon for a ſlave, or detains him as ſuch, is always bound to ſhew that this perſon was deprived of his liberty upon ſome juſt ground. The original proprietor of the matter in queſtion is always at hand: ſince nature made every man maſter of himſelf, or of his own liberty. It is plainly therefore incumbent upon the violent poſſeſſor to prove his title; and not upon the perſon deforced, and claiming his liberty, to prove a negative, that he did not loſe, or forfeit his liberty. [Without a previous inquiry of this kind no man can, in this caſe, be a fair purchaſer.]

9. Nor is it juſtly pleaded here, that captives would be put to death if they could not be made ſlaves and ſold as ſuch: and that therefore they owe their lives and all to the purchaſers. But ſure no higher ſort of title ariſes to the purchaſers in this caſe, than to ſuch as have done any other uſeful ſervice of equal importance; ſuch as, reſcuing a fellow-citizen from robbers or murderers, ranſoming them from pirates, curing

* Book II. xiv. 3. See Mr. Locke on Govern. Book II. as alſo *Hooker's Eccleſ. Policy*, and *Sidney* on *Government*.

diſeaſes or wounds which without the aid of art would have been deadly. All ſuch perſons ſhould have all expences refunded to them, and a generous compenſation for their labours and art. But whoever alleged that they could claim the perſons they thus ſerved as their ſlaves?

III. As it is the duty of ſervants who are juſtly ſubjected to others, to perform their work with diligence and fidelity; regarding God the common maſter of all, who is ever preſent with us: ſo it is the duty of maſters to exact no more from ſervants than what they have a right to, and to abſtain from all cruelty and inſolence; as it becomes thoſe who remember that all are of one blood, and naturally allied to each other, and that fortune is inconſtant, that the ſouls and bodies of ſervants are of the ſame ſtuff with our own, and of a like conſtitution; and that all of us muſt give an account of our conduct to God the common Parent and Lord of all.

CHAP. IV.

The ORIGIN *of* CIVIL GOVERNMENT.

HAVING finiſhed the account of domeſtick ſociety, we proceed to ſhew the origin and rights of civil ſociety, [in which it is univerſally underſtood, there is included a right veſted in ſome perſon or council to decide all controverſies ariſing amongſt large numerous bodies, to direct the actions of all for the common intereſt, and to compel all by force to obey their orders.] By the aſſociations already explained, if all men were faithful in diſcharging their duties, human life muſt have ſufficient affluence and pleaſure.

It muſt therefore have been ſome fear of miſchiefs to ariſe either from the weakneſs or vices of men, which has moved them to ſu' ject themſelves to civil power. But we muſt not therefore, call civil ſociety *unnatural* or contrary to nature. For whatever that reaſon, nature has endued us with, ſhews to be neceſſary or very conducive to obtain thoſe advantages we naturally deſire, or avert the contrary evils, muſt plainly be deemed natural to a creature endued naturally with reaſon and forethought. Men therefore are juſtly called, "creatures fitted by nature for civil polity."

Let us ſuppoſe all men ſo juſt that none would do to others any thing he judged injurious, but that they are pretty liable to miſtakes about their own and others rights, through their ſtrong ſelfiſh deſires, and the bias of impetuous paſſions: this would frequently occaſion controverſies among them. Let us further ſuppoſe that many honeſt men are yet too ſuſpicious, ſo that they will not ſubmit their diſputes to the arbitration of others, each fearing perhaps the intereſt of his adverſary with the arbiters, or his art in ſeducing them: if there be added to this, too much confidence on both ſides in their own force, and obſtinacy in opinion; their controverſies in natural liberty can be decided no other way than by violence and all the miſchiefs of war.

But there is ſomething in our nature which more immediately recommends civil power to us. Some of our ſpecies are manifeſtly ſuperior in wiſdom to the vulgar, as the vulgar are often ſenſible. Theſe of ſuperior ſagacity, as all muſt own, are capable of contriving and inventing many things of conſequence to the common utility of multitudes, and of pointing out more effectual methods for each one to promote his own intereſt, if their directions are complied with. If to theſe abilities be added alſo eminent moral virtues, goodneſs, juſtice, fortitude; the appearance of ſuch excellencies obtains the truſt and confidence of all, and kindles their zeal to promote ſuch perſons to honour and power; as they conclude that under their

direction all may obtain every ſort of proſperity. It is highly probable therefore that not only the dread of injuries, but eminent virtues, and our natural high approbation of them have engaged men at firſt to form civil ſocieties.

II. BUT if we conſider how much injuſtice, depravation of manners, avarice, ambition, and luxury prevail among men: it will be manifeſt, that without civil power, men cannot be preſerved in ſafety, not to ſpeak of any high advantages or pleaſures to be enjoyed in ſociety: and that it is by civil power alone an effectual remedy, and ſuch a one as muſt ſtrike the ſenſes of the moſt inconſiderate, can be found for the evils to be dreaded from theſe vices of men. For though all the members of a large aſſembly were ſo unjuſt, that upon a fit opportunity each one for his own intereſt would do injuries to others; yet each one would abhor like injuſtice done by his fellow, when he had no ſhare in the gain of it. An aſſembly therefore of ſuch men, of whom each condemned that injuſtice in his neighbour, which he would indulge in himſelf, will never make unjuſt decrees for their whole body. Each one will be aſhamed to own his diſhoneſty, and will live in dread of receiving injuries from others, unleſs they are all reſtrained by equal laws enforced by proper puniſhments.

Nor is there any other way of preſerving ſociety in ſafety. For although men were not generally ſo depraved, and that even humanity and conſcience reſtrained the generality from injuries, and inclined them to give aid to any who happened to be wronged: yet multitudes would omit this duty through fear and cowardice, if it expoſed themſelves to danger. Nay further; a ſufficient number of honeſt, brave men, if they were not directed by ſome head, and that united in their efforts, would run into the moſt different meaſures, according to their different ſentiments; and when thus disjoined would become a prey even to a ſmaller number of leſs bravery, who were united in their counſels.

It is therefore very probable that ſome of the wiſer and more ſagacious, obſerving theſe inconveniences of a ſtate of anarchy, fell upon this as the only remedy, that a large number of men ſhould covenant with each other about entering into a firm ſociety, to be regulated by the counſel of the wiſer few, in all matters relating to the ſafety and advantage either of individuals or the whole body. And diſcerning the many conveniences to enſue upon ſuch a project, have explained it to others, and perſuaded them to put it in execution.

III. THEY who aſcribe the firſt origin of all civil power to the violence of ambitious men, plainly preſuppoſe that already exiſting, whoſe original they are ſearching for: as no one man could have force enough, without a large number of others already ſubjected to his direction and government, to compel a multitude ſufficient to form a ſtate, to ſubmit themſelves to his power. A civil power therefore was conſtituted previouſly to that conqueſt they ſuppoſe to have produced the firſt civil power.

Should one allege that a potent head of a family, with his numerous domeſticks, might have conquered and thus compelled his neighbours around to ſubmit to him as their prince. This may have happened no doubt. But we are not to regard names, but things themſelves. Heads of families no doubt ſometimes had a proper regal power over their domeſticks. And further, we are not inquiring into the poſſible injurious methods of uſurpation, but into the probable juſt cauſes of juſt power.

IV. THAT it muſt conduce much to the intereſt of a multitude to be governed by a council of the wiſe, no man can deny. And although under ſome fooliſh plans of government, power may often be intruſted to bad hands, and thence great miſchiefs ariſe, as the corruptions of the beſt things may be moſt pernicious; yet this is no diſhonour to civil government, as if it were in general of little uſe or pernicious. For God has given men ſufficient powers of reaſon to chooſe

ſome of the more prudent convenient forms out of the innumerable multitudes conceiveable.

A ſtate or civil ſociety is, "a ſociety of free men "united under one government for their common "intereſt." That the common intereſt of the whole body is the end of all civil polity, is owned by all. This all ſubjects inſiſt upon; and all governors glory in it as their dignity; except ſome vain monſters, who forgetting their mortal ſtate, arrogate to themſelves the rights of Almighty God, or even powers more extenſive. The very notion of civil life, or polity, is oppoſite to deſpotiſm, or the power of maſters over ſlaves. That civil power therefore alone is juſt which is naturally adapted to this end: other power, though granted by the raſh deed of an ignorant people, has no foundation of right. There was an eſſential defect in the deed granting it, as it was founded in an error about what is owned by all to be moſt eſſential in ſuch contracts.

One can ſcarce avoid wondering how ſome * ingenious authors ſeem to pique themſelves upon aggravating and exaggerating all the burdens of civil ſubjection, as if they deſigned to deter men from entering into it; but then leſt they ſhould do ſo, they paint a ſtate of liberty and anarchy as the moſt frightful monſter of all. Whereas it is plain both ſtates have both their advantages and diſadvantages. There are no doubt many dangers in a ſtate of liberty, but theſe not continual: generally they are greater and more frequent than in civil life; unleſs a people have been exceedingly incautious in the plan of power they conſtituted: as in civil life we have a much ſurer proſpect of protection from injuries by the united force of all. Nor are there any evils peculiar to a civil life under regular government; the like or worſe, men

* The author has here in view *Hobbes*; and *Puffendorf*, both in his greater and leſſer book, who has too blindly followed Hobbes, nay even tranſcribed his very words.

were alſo * expoſed to in liberty: [as it will appear by conſidering the ſeveral parts of civil power in the following chapter.]

CHAP. V.

The INTERNAL STRUCTURE *of* STATES: *and the* SEVERAL PARTS *of* SUPREME POWER.

AS no govornors are the natural parents or progenitors of their people, nor if they were, could they tranſmit to any one heir the parental power over his adult brethern: as this power is founded ſolely upon the parental affection, and the weakneſs of immature years: the parental power can never be the foundation of the civil, though it be a natural ſketch or emblem of it. Nor can any perſon have ſuch power over a whole people as maſters have over ſlaves; as appears from what was already ſaid. Nor has God by any revelation nominated magiſtrates, ſhewed the nature or extent of their powers, or given a plan of civil polity for mankind. Nor laſtly, can mere force, without ſome foundation of right, conſtitute any juſt

* Thus ſubjects are bound to pay taxes, for the common intereſt, for fortifying or defending the ſtate. But each one in liberty muſt on his part be at greater charges, either for his own conveniency, for fortifying his houſe and arming his domeſticks, or for hiring aſſiſtance. Each ſubject may be obliged to hazard his life for the ſtate. But ſo each one in anarchy may more frequently for his own defence. Subjects ſubmit to a power of life and death over themſelves in criminal juriſdictions. But ſo each one in anarchy is ſubjected to a worſe power of any inraged perſon who alleges he is injured by him, and intitled to uſe force for redreſs. If by a power of life and death one means an arbitrary power in a governor, upon any caprice, without a crime alleged, to take mens lives away; no ſuch power is in any wiſe polity; nor can any human deed conſtitute it.

power. It muſt therefore remain that ſome *deed* or *contract* of a people muſt be the ſole natural origin of all juſt power.

In ſome extraordinary circumſtances the caſe may be otherwiſe. For ſince the good of the whole body, as all allow, is the ſole end of all civil power; if any perſon of eminent wiſdom and great power conſults this end ſufficiently, in preſcribing a legal plan, which all upon trial ſhall ſoon heartily embrace, he may perhaps without any iniquity impoſe this plan upon a rude and unexperienced people, which upon experience they ſhall ſoon approve, though he could not obtain their previous conſent to it. But as no people can be happy while they live in perpetual doubts and fears, as to the ſecurity of the higheſt intereſts from the invaſions of men in power; we may pronounce in general, that there can be no right to power except what is either founded upon, or ſpeedily obtains, the hearty conſent of the body of the people.

II. To conſtitute a ſtate or civil polity in a regular manner theſe three deeds are neceſſary; firſt a *contract* of each one with all, that they ſhall unite into one ſociety to be governed by one counſel. And next a *decree* or *ordinance* of the people, concerning the plan of government, and the nomination of the governors; and laſtly, another *covenant* or *contract* between theſe governors and the people, binding the rulers to a faithful adminiſtration of their truſt, and the people to obedience. It is true that in the firſt conſtitutions of power, it is ſcarce credible that a rude and incautious multitude, full of admiration of the ſhining virtues of ſome more eminent characters, took theſe three formal ſteps. But then in every juſt conſtitution of power, * ſomething was originally done which plainly included the whole force of theſe three tranſactions; ſince the end known and profeſſed by all ſides in this conſtitution of power was the common good of the whole body.

* See Mr. Carmichael's notes on Puffendorf, Lib. II. vi. 9.

As to the tranſmitting of theſe civil obligations to poſterity, the following obſervations will explain it. 1. Each citizen in ſubjecting himſelf to civil power ſtipulated protection from the whole body, with all the other advantages of a civilized life, not only for himſelf but for his poſterity: and in this, though uncommiſſioned, did them a moſt important ſervice. They are bound therefore,* whether they conſent or not, to perform to the body of the ſtate, as far as their power goes, all that which could reaſonably be demanded from perſons adult for ſuch important benefits received. Now it is highly reaſonable that all ſuch ſhould on their parts contribute to the defence and ſupport of that ſtate, by which they have been ſo long protected in a civilized life, and not deſert it unſeaſonably: but tranſmit that aſſociation with its beneficent influence to poſterity.

2. As it muſt be extremely dangerons to any political body ſettled in any diſtrict, that any lands within the ſame ſhould remain exempt from the civil power of the united body, to be a receptacle to fugitives or foreign enemies; it is juſtly preſumed that when any body of men poſſeſſing ſuch a diſtrict of land conſtitute a civil power, each one thus ſubjects his lands to it, that no perſon can hold the ſame without alſo ſubjecting himſelf to it, and uniting with the body politick.

3. And yet, in times of eaſe and peace, it would ſeem unjuſt and diſhonourable to any ſtate to hinder its citizens from ſelling their lands, removing to any other ſtate they pleaſe, and freeing themſelves from their former political relation. For the ſeveral ſubjects by the taxes or tributes they pay annually, compenſate all the ordinary advantages they receive from the community: and it would be unjuſt to hinder them to conſult better their own intereſt if they can elſewhere. Nor is there danger that any ſtate will be deſerted by many of its ſubjects, unleſs it be either miſerably conſti-

* This is an obligation *quaſi ex contractu*. See Book II. xiv. 2.

tuted or adminiſtred; and in ſuch caſes the citizens have a better right to quit it, and cannot be compelled to remain its ſubjects.

III. A ſtate conſtituted in this manner becomes as *one perſon* in law, holding *rights* different from thoſe of the ſeveral members; and under *obligations*, which bind no individual; and committing to certain perſons or councils the management of its common intereſts. Among ſeveral ſtates thus conſtituted, as they are all with reſpect to each other in natural liberty and independence, the like rights and laws obtain as among individuals in liberty. States have their perfect rights, and obligations to each other, and are bound to offices of humanity, in the like manner as individuals in natural liberty; and have like rights of ſelf-defence. This is the caſe of all ſtates which are independent, whether greater or ſmaller, whatever names and titles they bear, more humble or more oſtentatious. By an eaſy ſubſtitution therefore of ſtates for individuals, the natural law with reſpect to individuals in liberty, makes all that *publick law* of ſtates with reſpect to each other, which is of neceſſary obligation. As to voluntary or poſitive *publick law* we ſhall touch at it hereafter *.

IV. THE ſeveral powers requiſite for governing a people are divided into the *greater* and *leſſer*. Of theſe greater powers ſome are executed within the bounds of the ſtate, and others reſpecting other ſtates are to be exerted abroad. Of the former claſs, is that of *making laws* to regulate the behaviour of the ſubjects, and maintain their rights, ſtill regarding the law of nature.

2. Another is, that of *exacting all ſuch tributes* or revenues as the adminiſtration of the ſtate requires: this ſome make a branch of the former. Revenues are ſometimes raiſed from ſubjects, ſometimes from conquered provinces; ſome deſtined for ſupport of the families of the ſupreme governors, and ſome for the publick

* Ch. ix. and x. of this book.

uſes of the ſtate. As to the former, elective princes are deemed only as life-renters, and hereditary princes have a right, like that in fiefs, to be tranſmitted unburdened to their heirs. As to the other branch, princes can only be deemed adminiſtrators or truſtees for the whole ſtate.

3. A third branch of power is the *executive*, containing all juriſdiction civil and criminal; and the right of conſtituting magiſtrates, and judges to take care of all publick affairs, and decide controverſies, as alſo officers to collect the tributes.

The powers to be exerted abroad are firſt thoſe of *war*, in enliſting ſoldiers, and appointing officers, and directing all military operations.

2. The power of making *treaties*, either for ſettling peace, or maintaining commerce, and of conſtituting ambaſſadors for this purpoſe.

There is beſide all theſe a certain *extraordinary right* in the ſupreme governors of any people, in great exigencies, to incroach upon thoſe rights of the ſubjects which for ordinary are to be religiouſly maintained to them: as when it happens to be abſolutely neceſſary, in ſome perilous emergencies, either to compel them to ſome extraordinary dangerous ſervices, or to contributions of their goods beyond the ordinary proportions. This right in civil life anſwers to theſe extraordinary rights of neceſſity, we formerly * mentioned in natural liberty.

The ſmaller rights commonly veſted in the ſupreme governor, are thoſe of conferring civil honours, coining of money, granting to hold fairs or markets, legitimating of children, erecting corporations, admitting minors as if they were of due age, pardoning criminals, giving protection to debtors, and ſuch like; which we briefly paſs over as of leſs importance, and not always neceſſary in every ſtate.

V. THOSE perſons or councils have the ſupreme power, who are intruſted with the greater branches of power above-mentioned, or the greater part of them,

* Book II. ch. 16. art. 3. near the end.

ſo that they can exert them according to their own judgment, and no other perſon or council can reſcind their deeds. Many have ſupreme power who do not hold it unlimited, nor even for life: ſuch too as cannot alter the order of ſucceſſion, or aboliſh any of the fundamental laws of the ſtate. He is ſupreme to whom the chief parts of civil power are committed, though within certain limits, to be executed by his own order for the good of the body, ſo that he does not act by new commands, or commiſſions from any other; and whoſe deeds derive not their force from the conſent of any ſuperior.

In every ſtate the ſame quantity of power is deemed to be lodged ſome where or other; either with a monarch, a ſenate, or popular aſſembly, or at leaſt with the whole body of the people. Nor is it any diminution of the ſupremacy or independence of a ſtate that it is bound by its treaties with others, even though they be very inconvenient ones; provided the ſtate can ſtill exerciſe all the greater parts of civil power, and can govern itſelf independently of others.

If a number of ſtates enter into ſuch a ſtrict alliance, as to conſtitute ſome one perſon or permanent common council for them all, and commit to this perſon or council ſome parts of the ſupreme power, to be executed for them all; they are called a *ſyſtem of ſtates*, or *Achaian ſtates*, from a famous inſtance of that kind. But independent ſtates then incorporate entirely into one, when the very ſame perſons or councils have committed to them all the parts of the ſupreme power to be executed for them all.

CHAP. VI.

Of the VARIOUS PLANS *of* GOVERNMENT.

THE ſimple forms of government are divided into three claſſes, according as the power is committed to one perſon or to one council. When it is committed to one perſon, it is called monarchy; when to a council of ſome few eminent citizens, it is an ariſtocracy; and when it is committed to a popular aſſembly either of all the free citizens, or of ſome more reputable perſons deputed by them, it is democracy.

When power is committed to a council, that is deemed the will of the council which is determined by the major part; unleſs by ſome fundemental law a certain number of members is made neceſſary for determining any matters of publick adminiſtration, as a *quorum*; and what proportion of this number, can make any alterations. Precaution ſhould alſo be taken againſt an inconvenience which may always happen when a queſtion of three or more parts is put to a vote, that that part to which a great majority may be moſt averſe, may yet have more votes than any one of the other parts, and thus be enacted. This may always be prevented by reducing a complex queſtion into two or more ſimple ones, of two parts each; or by excluding by previous votes one or two of the parts of the complex queſtion, ſo as only two parts ſhall remain for the laſt deciſive vote. A like method may be taken where many candidates ſet up for the ſame office.

II. OF each of theſe ſimple kinds there are many ſpecies. Monarchy is either *abſolute*, where the whole adminiſtration is committed to the prudence of the monarch, without any other limits than thoſe which are always underſtood from the general end of all civil go-

government; or it is *limited* in the original conveyance of the power; and certain rights reſerved to the people and exempted from it. And then each of theſe kinds are ſubdivided into *hereditary* and *elective*: the elective princes again may either be choſen for *life*, or for a *certain term*.

There are are likewiſe ſeveral kinds of *ariſtocracies*, *abſolute*, or *limited*; *hereditary* or *elective*; *perpetual* or *temporary*. * In this laſt ſort the ſenators hold their ſeats for a certain term; upon the expiration of which, others are ſubſtituted in their places. If ſuch new ſenators are elected by the people, and any free citizen may ſtand candidate, the council is rather *democratical*: but if the places are filled by the votes of the remaining members of the council; or only ſome eminent families can be candidates, it is *ariſtocratical*. When the ſeat in the ſenate depends upon a certain quantity of wealth; or is held in virtue of certain lands juſtly poſſeſſed; it is called properly *oligarchial*. When theſe alone can be elected who have diſcharged certain great offices with approbation, this is deemed *ariſtocracy* in the propereſt ſenſe, and the plan of it moſt commended by ſome great authors of antiquity.

There are alſo different kinds of *democracies*, as the popular aſſembly is differently conſtituted. We have examples of two ways in the *comitia curiata*, and *centuriata* of the Romans. In the former all citizens voted equally: In the later according to their fortunes. In ſome ſtates the lot determined the members of the aſſembly: in others the people being divided into a number of tribes, counties, or diſtricts, and theſe again ſubdivided; each diviſion ſends ſo many

* The characters of ariſtocracy, are *cooptation* by the ſenate, to a perpetual ſeat, and a limitation to certain eminent families, diſtinguiſhed by fortune, or bearing great offices. The characters of democracy are *popular elections*, *temporary ſeats*, and *acceſs to all* citizens to ſtand candidates. There is in many conſtitutions a mixture of theſe different characters.

delegates or deputies, choſen by themſelves, to be members of the popular aſſembly.

The complex forms are innumerable, according as any of the different ſorts of ſenates jointly ſhare the ſupreme power, with any of the ſorts of monarchy; and again as any of thoſe complex kinds are again conjoined with one or other of the popular aſſemblies: and then as ſuch or ſuch parts of the ſupreme power are veſted in one or other of theſe councils, or in the monarch; or in all three jointly.

III. THAT we may diſcern which of theſe forms is preferable, the following obſervations ſeem proper.

1. In conſtituting of a ſtate theſe four points are to be aimed at; that firſt, there be ſufficient *wiſdom* in the government to ſee what is beſt for the ſtate; and then *fidelity* to chooſe what is beſt; and next, that *concord* be maintained; and laſtly, a *ſecret and ſpeedy execution*. If in any plan ſufficient precaution is taken for all theſe, a people cannot deſire more from its civil polity.

2. Where the parts of the ſupreme power are placed in different ſubjects or bodies; there muſt be ſome ſuch political bonds between them, as ſhall prevent their acting in oppoſition to each other; that the prince, for inſtance, may do nothing of high importance without conſent of the ſenate or popular aſſembly; nor theſe bodies do any thing without conſent of the prince; nor one of theſe bodies without the concurrence of the other. If any ſufficient precautions of this kind be taken, the civil power is better lodged by parts in different bodies, than all committed to either a monarch, or to any one council.

3. The power whereſoever lodged will never remain ſtable unleſs it has large *property* for its foundation; without this it muſt be fluctuating, and expoſed to frequent ſeditions. Wealth carries force along with it, which will overturn rights not ſupported by wealth; or be wreſted from the owners by the civil power. An hereditary monarchy needs for its ſtability large crown-lands, or hereditary provinces, be-

longing to the monarch's family. A ſenate will not remain ſtable unleſs a large ſhare of the lands are the property of the ſenators: and lands muſt be diſperſed among great multitudes, and preſerved thus diſperſed by agrarian laws, to make a ſtable democracy; or ſome other cauſes muſt keep property much diffuſed. And although the diligent and active ſhould not, without weighty cauſes, be any way reſtrained in their juſt acquiſitions: (and indeed the beſt ſorts of democracy may allow them to acquire as much as can be requiſite for any elegance or pleaſure of life that a wiſe man could deſire:) yet we are never to put in the ballance with the liberty or ſafety of a people, the gratifying the vain ambition, luxury, or avarice of a few. It may therefore often be juſt to prevent by agrarian laws ſuch vaſt wealth coming into a few hands, that a cabal of them might endanger the ſtate.

4. No ſuch inſolent or oppreſſive privileges ſhould be granted to any one order in the ſtate, as would exclude all others from publick offices of dignity or profit. For they will become occaſions of perpetual ſeditions *.

5. As it would be of little conſequence what were the form of polity, were it provided that none but good and wiſe men got into power; (which perhaps no precaution can enſure) the main drift of good policy is, to provide that even though bad men come into power, they ſhall either have ſmall temptations to abuſe it, or at leaſt no hopes of gain and impunity in doing ſo.

6. As to the fitteſt number for making an happy ſtate, nothing can be preciſely determined. If the number is ſmall, there would not be ſtrength enough againſt bands of the avowedly unjuſt, who may attack it by ſurprize; nor will there be ſufficient wealth to execute any wiſe deſigns for the improvement of life. On the other hand, when the numbers and the extent of a coun-

* Of this we have a clear inſtance in the Roman ſtate, till the plebeians got acceſs even to the conſulate.

try is very large, no governors can take ſufficient care of all their intereſts, and prevent frauds, extortions and oppreſſions, even by the avarice of the deputy-magiſtrates, as acceſs to complain muſt be more difficult. And beſides, far fewer men can be employed in the greater and more important ſtate-affairs, and thus improve in that moſt important part of wiſdom, than if out of the ſame numbers and the ſame tract of ground, ſeveral diſtinct independent ſocieties had been framed. Indeed this is ſeldom matter of choice, what numbers ſhould unite. For if once vaſt empires are formed, it becomes neceſſary to any little ſtates around them to incorporate together, as many of them as may be, for their defence againſt a potent neighbour. But as agrarian laws are often juſtifiable in a ſtate, to prevent the immoderate increaſe of wealth in the hands of a few; it is equally juſt, for the ſame reaſons, that ſmaller neighbouring ſtates ſhould take timely precautions, and that by violence too, if gentler methods are not like to ſucceed, that no neighbour-ſtate ſhould acquire ſuch force as may enſlave all around; eſpecially if they ſee a prevalent diſpoſition in all the inſtitutions and manners of any neighbour-ſtate toward military affairs and conqueſt.

IV. MONARCHY has theſe peculiar advantages, that it is adapted to preſerve concord, and make a ſecret and ſpeedy execution of any deſign. But then in hereditary monarchies there is ſmall ſecurity for either the wiſdom or fidelity of the monarch. In elective monarchies there is greater probability for wiſdom; but rather leſs for fidelity: and upon the death of each monarch there is an open gate to civil wars. Under an abſolute hereditary monarchy nothing is ſecure. Under the limited hereditary, no better precaution is taken for wiſdom, but there is better precaution as to a faithful adminiſtration: ſince if the monarch violates the fundamental laws, or breaks over the bounds ſet by them to his power, he plainly declares himſelf a tyrant, and forfeits his right; which all the ſubjects muſt plainly ſee: and hence will more readily agree in dethroning him to ſet up another, or to conſtitute ſome better plan.

But then in the limited monarchies there generally prevail factions, which ſometimes turn into civil wars.

In the ſimpler hereditary ariſtocracies ſcarce ſufficient precaution is taken for wiſdom, and ſcarce any for fidelity, concord, or ſecret and ſpeedy execution. In the elective are better precautions for wiſdom and fidelity, but no better for concord or execution.

In democracies we are always ſecured as to fidelity; and may have a tolerable proſpect as to wiſdom too, when mens votes are according to their fortunes; or when the aſſembly is made up of deputies elected by the people: but there is no ſecurity of concord, or of ſpeedy and ſecret execution in any pure democracy.

The moſt convenient way of voting in all large councils or aſſemblies is by the ballot: as by this means men need not dread the reſentments of men in power; and it is leſs eaſy to uſe any indirect influence. And although in the ballot there is no reſtraint of ſhame, but a door opened for private favour, hatred, and envy; yet it ſeldom happens that theſe paſſions work in the majority of a people without ſome juſt or probable cauſe. But if ſomething of the lot be alſo intermixed *, it may often quite defeat great cabals, and their arts of corruption, and ſtop the power of malice and envy. But the lot alone muſt be quite unfit to determine any point of conſequence, or to advance any perſons to offices; for though no man is affronted by a diſappointment this way, nor is there any room for partial favour; yet it is plainly void of all prudence or wiſdom.

V. WE have ſaid enough to ſhew that none of the ſimple forms of government are well adapted to preſerve any ſtate happy. Nor is it of any avail to plead antiquity here. If all the moſt antient ways were beſt, we ſhould return to caves and beaſt-ſkins for our ſhelter and dreſs. What flatterers of princes often tell us, that monarchy was the earlieſt form, is rather diſhonourable to it; importing indeed that it at firſt pleaſed

* All theſe points are fully explained by *Harrington*.

a rude and unexperienced populace, but could not continue to pleaſe upon experience and the increaſe of wiſdom. And indeed in nothing could one leſs expect that the firſt eſſays would be perfect, than in the conſtitution of civil polity; a work requiring the greateſt knowledge and prudence, to be acquired only by much thought and experience of human life. The ſeveral great inconveniences attending each of the ſimple forms ſhew the neceſſity of having recourſe to the mixt and complex; and the ſeveral great advantages peculiar to each of the ſimple, ſhew that thoſe mixed forms are beſt where all the three kinds are artfully compounded: and this was the opinion of the wiſeſt men of antiquity *.

As a council of delegates or deputies duly elected by a general popular intereſt, can never want fidelity or good intention, and ſeldom can be deficient in wiſdom, it may ſeem adviſable that a large ſhare of the civil power ſhould be lodged in ſuch a body; ſuch as that of enacting laws and even determining definitively the moſt weighty affairs in deliberation. And this part of a conſtitution ſhould be ſecured by agrarian laws: not ſo ſtrait however as to diſcourage induſtry, or exclude any innocent elegance or ornament of life.

If there be alſo a *ſenate* of a few who have approved their abilities and fidelity in diſcharging the great offices of the commonwealth; it may ſafely be entruſted with the ſole right of deliberating, debating, and propoſing buſineſs to the popular aſſembly. In both councils it may be proper to contrive a rotation, by new members gradually ſucceeding to the old, ſo that neither council may have above one-third of unexperienced new men, nor yet any one man continue a member perpetually. Laws limiting the times that any general, miniſter of ſtate, or magiſtrate can continue in office have alſo great advantages, to prevent any perſon's ſo rooting himſelf in power or popularity, as to be dangerous to the conſtitution; and to train up greater

* *Plato, Ariſtotle, Zeno, Cicero.*

numbers in political wiſdom, by experience in all the important offices; ſo that the ſtate may never be obliged to have all its hopes depending upon one mortal life. Where ſuch laws are ſacredly eſtabliſhed, the ſtate will never want the benefit of the wiſdom or experience of ſuch as have ſerved out their legal time. For it will be no matter of offence that at the expiration of it they muſt lay down their offices according to law.

And laſtly, for ſudden unexpected exigencies or dangers, and for the ſecret and ſpeedy execution of what the publick intereſt may require, ſome ſort of regal or dictatorial power is requiſite; but ſuch an one as has no other foundation of its force but the laws themſelves. And to this power may be committed the command in war, and the execution of the laws. This third branch may be as an arbitrator, holding the ballance between the two other parts of the conſtitution, if there ſhould ariſe any high contention between the ſenatorial order and the plebeian.

The power of promoting to all ſorts of offices may be ſome way veſted in theſe three jointly, or divided among them; ſo that offices requiring great abilities and wiſdom ſhould be filled by the nomination of the ſenate; ſuch officers as are to be employed in ſpeedy execution, to be nominated by the prince: and ſuch as are to protect the rights of the people, and adminiſter juſtice among them, to be elected by the people.

A cenſorial power too would be of the higheſt uſe, to reform, or prevent the corruption of manners; by degrading perſons of any dignity whatſoever, as ſoon as they run into a diſſolute courſe of debauchery.

CHAP. VII.

The RIGHTS *of the* SUPREME POWER: *and the* METHODS *of* ACQUIRING IT.

THE perſons veſted with the ſupreme power, have it with that extent which the conſtitution or fundamental laws have given them. The ſum of *civil power* in all ſtates is the ſame; the ſame quantity of it in every ſtate reſides ſome where or other, at leaſt with the body of the people. But the powers veſted in the king, or in any councils, in one ſtate, may be very different from what is veſted in like perſons or councils in others. For in ſome, certain rights of the people are expreſsly exempted from the power of any prince or political council; but in others, there is no ſuch exemptions. But as the end of all civil power is acknowledged by all to be the ſafety and happineſs of the whole body; any power not naturally conducive to this end is unjuſt; which the people, who raſhly granted it under an error, may juſtly aboliſh again, when they find it neceſſary to their ſafety to do ſo. Nor can any thing be conceived more inſolent or perfidious, than that perſons intruſted with power ſolely for the good of a people, ſhould ſtrive to retain it by force, for their own grandeur, when it is found deſtructive to the people.

It were to be wiſhed that in theſe caſes, ſuch powers ſhould be aboliſhed in a peaceable manner, by mutual conſent, rather than by force. Nor is it juſtifiable in a people to have recourſe for any lighter cauſes to violence and civil wars againſt their rulers, while the publick intereſts are tolerably ſecured and conſulted. But when it is evident, that the publick liberty and ſafety is not tolerably ſecured, and that more miſchiefs,

and theſe, of a more laſting kind, are like to ariſe from the continuance of any plan of civil power, than are to be feared from the violent efforts for an alteration of it, then it becomes lawful, nay honourable, to make ſuch efforts, and change the plan of government.

What is alleged about ſome peculiarly divine right, and inviolable ſanctity of governors, eſpecially monarchs, is a mere dream of court-flatterers. In one ſenſe every right is divine which is conſtituted by the law of God and nature. The rights of the people are thus divine, as well as thoſe of princes: nay ſince the latter were conſtituted for the defence and protection of the former; the former ſhould be deemed the more divine and ſacred. The rights of the governor, as they are more important than thoſe of any one private man, may be deemed more ſacred than his private rights; but can never be deemed more ſacred than the rights of the whole body. A good ſubject ought to bear patiently many injuries done only to himſelf, rather than take arms againſt a prince in the main good and uſeful to the ſtate; provided the danger only extends to himſelf. But when the common rights of the community are trampled upon; and what at firſt is attempted againſt one, is to be made a precedent againſt all the reſt, then as the governor is plainly perfidious to his truſt, he has forfeited all the power committed to him.

II. In every ſort of government the people has this right of defending themſelves againſt the abuſe of power. If the prince's power be limited, and yet he breaks over his bounds, invading ſuch rights as the people had reſerved in the very conſtitution of the power; the people's right of reſiſtance is unqueſtionable. But even in abſolute governments they have the ſame right; if their governor, ceaſing to uſe his power as if he owned it deſtined for the good of the body, ſhould govern the whole ſtate as his own property; and neglecting the common ſafety of all, turn every thing to the gratification of his own luſt or avarice; or if he plainly declares a hatred of his people;

or conducts all affairs in such a wretched manner, that not even the most sacred rights of the people, such as are necessary to any tolerable life, remain secure to them. Nor does this doctrine of resistance give to the people a civil superiority over their governors: for even slaves adjudged to the most miserable subjection for their crimes, may have a right to defend themselves against certain injuries their masters may attempt against them.

As to that question, who shall be judge in this disputed point, whether the governors by their perfidy and mal-administration have forfeited their right? If it is alleged, the people cannot judge as they are parties: for the same reason the governors cannot judge. The only recourse then should be to impartial arbiters, either within the state, or in some other nation, if this could be safe; but if not, surely the people have a better claim to judge in this point; since *they* at first entrusted their governors with such powers, and the powers were designed for the management of the people's interests, and were constituted for their behoof. It is true there are great dangers of mistakes on this head: but the governors are not exempted from errors more than the people. Men have often erred both about publick rights, and the private ones too of self-defence; but we must not for that reason deny that they have such rights.

In this most important matter, no doubt, persons concerned are bound to use the utmost caution, and weigh all things on both sides. Nor ought we to involve our fellow-citizens in civil-wars, the most miserable of all wars, for any such lighter injuries, or wrong conduct of our governors, as may be incident sometimes to persons in the main good and of upright intentions. But when there is no other way of preserving a people; and when their governors by their perfidious frauds have plainly forfeited their right; they may justly be divested of their power, and others put into their places, or a new plan of power established.

Nor does this doctrine of the right of reſiſtance in defence of the rights of a people, naturally tend to excite ſeditions and civil wars. Nay they have been more frequently occaſioned by the contrary tenets. In all ages there has been too much patience in the body of the people, and too ſtupid a veneration for their princes or rulers; which for each one free kingdom or ſtate has produced many monſtrous herds of miſerable abject ſlaves or beaſts of burden, rather than civil polities of rational creatures, under the moſt inhuman and worthleſs maſters, trampling upon all things human and divine with the utmoſt effrontery.

III. Upon dethroning a tyrant, or upon the natural extinction of a royal family, or the death of an elective prince, there ariſes an *interregnum*. In which caſe, even although there be nothing expreſsly provided in the conſtitution, yet the political union of the people is not quite diſſolved. They all continue bound by that firſt covenant we mentioned, to conſult their common intereſt by joint counſels. They ſeem to be in a ſort of ſimple democracy for ſome time; in which it ſhould be determined by plurality of votes of the whole, or of thoſe at leaſt who uſed to be concerned in the publick affairs, what ſhall be their future form of polity and who are to be promoted to the government. Nor is it juſt that any ſmaller part, without conſent of the reſt, ſhould break off from the political union; unleſs the majority are ſetting up ſome unjuſt or deſtructive plan of polity.

IV. To princes, or rulers of any kind, who have evidenced integrity and fidelity in their truſt, the higheſt deference and honour is due from their ſubjects; they ſhould be ſupported and defended with the lives and fortunes of all, whether againſt rebels or foreign enemies. Nor are ſubjects freed from this obligation, by any ſuch lighter faults or miſtakes of their governors, as may be incident to men in the main upright and faithful to their truſt. But if after all the efforts of their ſubjects, ſuch princes are conquered and dethroned, either by ſome competitor or ſome foreign

power, ſo that there remain no probable hopes of their recovering their juſt rights; it is their duty in ſuch caſes to quit their claim: nay it is juſtly deemed extinct: ſince all obligations between governors and ſubjects are mutual, depending upon mutual offices. And when it becomes impoſſible for one ſide to perform his part, the other is freed from his obligation. The people therefore, after their utmoſt efforts for their old rulers have proved unſucceſsful, may juſtly ſubmit to the conqueror, when they cannot otherwiſe conſult their own ſafety. It would indeed be ſtrange arrogance in any prince to expect that a whole people ſhould be bound, by a vain zeal for his dignity and intereſt, to expoſe themſelves to all the rage and fury of a conqueror, to no valuable purpoſe.

V. As natural liberty is "the right of acting as "one inclines within the bounds of the law of na-"ture;" (nor could we hold any ſuch liberty were there no laws to defend it from the force of the ſtronger:) ſo we ſay a people enjoys liberty when "each "one is allowed to act as he inclines, within the "bounds of civil law, and not ſubjected to the caprice "of any other." We ſhould never look upon laws as averſive of liberty; but that its ſole enemy is the capricious humourous will or command of men in power. The Romans indeed in ſpeaking of a *free people,* generally meant a democratical ſtate; where men had their turns of commanding, as well as of obeying.

VI. It was already ſhewn that civil power can ſcarce be conſtituted juſtly any other way than by the conſent of the people: and that rulers have no other ſacred rights or majeſty, than what may ariſe from this: that of a large multitude of men, each one for himſelf ſubjected part of his rights to the adminiſtration of a certain perſon or council. And thus from a part of our natural liberty transferred to the ruler, and our property in a certain degree ſubjected to his diſpoſal, ariſes the legiſlative power. In natural liberty alſo each one had a right to expoſe his life to the greateſt dangers, in any honourable ſervices in

defence of his family or his neighbours, and when the common intereſt required it he could commit himſelf to the direction of others in ſuch ſervices; and hence the right of military command. Men had alſo this right of repelling injuries, and puniſhing by violence any one who attempted or executed any injury, and even of putting him to death if this was neceſſary for the common ſafety: and hence ariſes all *criminal juriſdiction*, even to the inflicting of capital puniſhments. Nor need we have recourſe to any extraordinary grants or commiſſions from God to explain any of theſe rights of civil ſovereigns.

VII. Nor can any one form of government be eſteemed more divine than others, on any other account than that it is better adapted to promote the proſperity of the community; which can leaſt of all be alleged of abſolute hereditary monarchies. Need we ſuggeſt here that no divine law natural or poſitive determines the order of ſucceſſion to monarchies, whether the *general hereditary*, and that either by males only, or alſo by females; or the *lineal hereditary*. In the ſucceſſion to private fortunes, though this be manifeſt in general, that the goods plainly acquired for the behoof of a man's family and kinſmen, ſhould deſcend to his family or kinſmen upon his deceaſe; yet there are not a few difficulties in determining the proportions. But as to civil governments, which, it is obvious, were never conſtituted for the behoof of a family, but for the intereſt of a whole nation; there ſeems no natural reaſons that the ſucceſſion to them ſhould depend upon the proximity of blood to the former poſſeſſor; and much leſs that the lineal ſucceſſion ſhould be regarded*. All ſuch

* See Book II. Ch. 8. 4. The deciſions of ſome queſtions about the ſucceſſion in hereditary lineal kingdoms, turn upon very fantaſtick reaſons. Some allege proximity as a natural reaſon; and yet an elder couſin-germain's grand-child, ſhall often be preferred to a younger couſin-germain. They ſay too that ſeniority is a natural reaſon of preference; and yet the

right of ſucceſſion muſt ariſe from human laws, or decrees of a people, and theſe ſometimes very incautious and imprudent.

VIII. As to that much celebrated *right of conqueſt*, by which the conqueror claims the civil power to himſelf and his heirs over the conquered people; it has little better foundation generally than the claim of robbers and pirates upon perſons and their goods which have fallen into their hands*. For firſt, unleſs the conqueror had a juſt cauſe, he acquires no right. And then though his cauſe was juſt, yet, as we ſaid above†, his claim has certain bounds; nor has he a right to exact more from the vanquiſhed than what is requiſite to repel the injury attempted, to repair all damages done, or to obtain ſufficient ſecurity againſt injuries for the future. If he inſiſts on more, he has no juſtice on his ſide in ſuch demands. Now it is never neceſſary, either for averting of injuries, or repairing of damages, that the conquered ſhould be deprived of their liberty, or independency, and be reduced into the form of a province to the conqueror. Nay it is generally very pernicious to the common intereſts of mankind, that ſtates ſhould thus enlarge their power, and make it formidable to all around them. All preſent danger to the victorious is averted, and full reparation of damages generally obtained, long before their

infant-grandchild of a deceaſed elder-brother takes before a ſecond-brother of mature years. The pre-eminence of ſex too is made a great matter; and yet the infant-grand-daughter by an elder-uncle deceaſed, ſhall take before a younger-uncle. In general, theſe potent cauſes of preference, proximity, ſeniority, and the ſex, are not regarded as they are found in the competitors themſelves; but as they were perhaps in their great-grandfathers or great-grandmothers, deceaſed an age or two before.

* Upon this ſubject ſee *Locke on Government*; whoſe reaſonings are well abridged in Mr. *Carmichael*'s notes on Puffendorf's ſmaller book. Book II. ch. x.

† Book II. ch. xv. 5. 8. and Book III. ch. iii. 2.

enemies are entirely ſubdued and over-run by their arms. The conquerors generally ſoon take to themſelves abundant compenſation out of the moveable goods of the conquered: and every ſtate when thoroughly defeated, would always conſent to make compenſation this way, nay would pay an annual contribution for a certain term, to make up what was awaiting; rather than loſe their liberty and ſovereignty, and be ſubjected to foreigners. And ſurely by theſe ways all damages could be abundantly repaired*.

As to ſecurities againſt future injuries: ſurely ſuch ſecurities as are univerſally allowed to be ſufficient againſt a ſtate yet retaining much of its ſtrength, ſhall be more than ſufficient againſt one wholly exhauſted and almoſt ruined by war: now in all treaties, theſe are deemed ſufficient ſecurities againſt ſtates yet retaining much of their force, if they deliver hoſtages, give up their fleets, or a great part of them, ſurrender frontier towns with their fortifications, or receives garriſons of their neighbours into them, or even if they diſmantel them, or demoliſh all the fortification. Nor is there any ſtate that would not rather conſent to all theſe, rather than become a province ſubjected to another.

IX. If it be alleged that puniſhments ſhould alſo be inflicted as a further ſecurity by deterring others: yet ſurely none ſhould be puniſhed but the guilty. Now the far greater part of any conquered people were involved in no guilt by their governors having entered into even the moſt unjuſt wars. † The conqueror therefore can demand no more of the body of a people than that they either give up their injurious governors, or deſiſt to defend them any further, that the victor may puniſh them as they deſerve. But as to any thing done unjuſtly or inhumanly in publick wars, the common

* The reaſonings in this and the following articles are deſigned againſt the pleas of *Grotius* and *Puffendorf* for the rights of conqueſt, and *patrimonial kingdoms*, or *principalities*, founded on it.

† See Book III. ch. iii. 2.

intereſt of mankind would diſſuade from making it matter of proper puniſhment. Within the bounds of any regular polity, it is generally highly probable or certain that the power of the laws and magiſtrates will be ſuperior to that of any criminal citizens; and that therefore they may be brought to juſtice. But in publick wars, the forces of the parties by their confederates and allies are ſo generally brought to a parity, that the event is very uncertain; and the juſt cauſe is often unſucceſsful. This ſhould reſtrain conquerors even in the juſteſt cauſes from any ſeverities, under the notion of puniſhment; as they will become precedents to others in very bad cauſes, which yet they may judge to be juſt. The victorious therefore ſhould beware of eſtabliſhing a precedent, which may be followed thereafter againſt themſelves or their friends.

It is vain to allege any tacit convention between the parties in war, that that ſide ſhall have the civil power over both which happens to be victorious. Taking arms is rather an open declaration of the contrary, that neither ſide intends to ſubmit its rights of any ſort to the other: unleſs in thoſe caſes where there has been ſuch covenants expreſsly made: nor was it ever, in any other caſe, deemed perfidious, that the party defeated rallies its forces, makes new levies, or gets new allies to continue the war. Can any one pretend, that that ſide which has a juſt cauſe, defending or proſecuting its own rights, makes any ſuch convention? and if one ſide is known not to do it, we can never preſume it on the other ſide. The patrons of this right of conqueſt too, can allege only that the ſupreme governors conſented, and not the body of the people: but with what ſhadow of right can any governors, whoſe power was granted to them only in truſt for protection of the people, pretend to alienate or transfer the whole people with all their rights to another, either abſolutely or upon any contingency? ſuppoſe the governors made ſuch an expreſs convention: by this audacious perfidy they plainly forfeit their power; nor is the ſtate bound by ſuch a deed.

X. SINCE therefore all the authors who plead that certain civil ſovereignties are *patrimonial*, ſo that they may be ſold, divided, or any way transferred at the pleaſure of the ſovereign, ſuppoſe alſo that they are generally founded in conqueſt; what is ſaid above ſhews that ſuch power has no juſt foundation. Nay, if it ſhould happen that a ſtate in the greateſt conſternation, upon an invaſion from barbarians, ſhould by their own deed ſubmit themſelves and all their rights to ſome potent neighbour, demanding nothing from them but protection; yet even ſuch a deed cannot conſtitute a patrimonial power *. For not to mention the exception of unjuſt force and terror; or that this covenant being plainly of the onerous kind, yet does not maintain the eſſential equality: the very nature of the covenant, and the matter of it, ſhews that no patrimonial power could be intended in it. A ſtate by ſubmitting itſelf to a humane, civilized neighbour, which exerciſed a gentle rule over its ſubjects, cannot be deemed to have conſented alſo to any manner of oppreſſion or vexations that thereafter this neighbour may inflict on them; nor that they ſhould be made over to any barbarous prince or people at the pleaſure of thoſe they entruſted themſelves to. Nay, if this ſuperior ſtate ſhould attempt any thing very oppreſſive of this nature, the ſubject-people may juſtly ſhake off the yoke: ſince it was plainly upon other terms that they ſubjected themſelves. They have a right to demand arbitration, as to the equity of any thing impoſed beyond what ſhould be deemed a juſt compenſation for the protection received.

Nor can any right of ſovereignty ariſe from any ſeeming conſent of the conquered, which was only extorted by preſent force. For we ſhewed † above that ſuch force is plainly unjuſt. But if the victor eſtabliſhes among the vanquiſhed ſuch an equitable plan of civil power, as ſufficiently conſults their future ſafety and proſperity, ſo that upon experience of it they are

* The reaſons here confuted are found in Grotius, L. I. iv.

† 8th of this chap.

truly ſatisfied to ſubmit to it; this ſubſequent conſent becomes a juſt foundation of his power, and is a ſort of civil expiation of the injury done in the conqueſt.

XI. BUT further, as the right of any perſon of the royal blood to ſucceed upon the demiſe of his predeceſſor, is not founded on any natural cauſes, but ſolely upon ſome old law or decree of the ſtate: the words of ſuch laws or deeds are to be underſtood in the ſame way as like words about other matters deemed hereditary; and thus we are to collect from them what was the intention of the people in ſuch deeds. When therefore this univerſally obtained in any country, that when the preſent poſſeſſor of any thing hereditary forfeits it, he forfeits not only for himſelf but all his kindred; we juſtly conclude that the people's intention was that the forfeitures of the hereditary ſovereignty ſhould be in the ſame manner. The plea againſt extending forfeitures to the whole kindred of the perſon forfeiting, is very ſtrong and plauſible as to private fortunes, which all know were acquired chiefly for the behoof of the proprietor and his family; and this according to a natural obligation: ſo that children and kinſmen too have a natural claim to be ſupported and have their condition advanced out of ſuch fortunes: and it is unjuſt that the fault of one of the joint proprietors ſhould prejudice the reſt, and prevent their obtaining what they are naturally entitled to. But as to hereditary ſovereignties the caſe is quite different. They were not conſtituted for the behoof of the royal family, nor founded in conſequence of any juſt claim they had for their own behoof; but for the intereſt of the whole nation, and chiefly to prevent the miſchiefs to be apprehended in new elections of ſovereigns: and therefore they are much more juſtly made liable to entire forfeitures from the whole family, than any private fortunes.

As therefore a people may juſtly dethrone a perfidious prince; they have a better right to exclude from the ſucceſſion any one who ſhews himſelf plainly unfit for the truſt: and ſuch are thoſe who hold tenets about

divine rights which muſt excite them to trample upon the moſt ſacred rights of the people, as ſoon as they get into power; or thoſe who poſſeſſed with ſome furious ſuperſtition will ſubject their crown, or alienate no ſmall parts of the ſupreme power, to ſome foreign prince, under the ſhew of a religious character; and at the ſame time think themſelves commiſſioned by God to break through in the moſt audacious manner the fundamental laws or conſtitution, and all limits ſet by it to their power; and to force the ſubjects by the ſevereſt tortures either to believe, or falſely profeſs to believe, the moſt monſtrous abſurdities in religion, and to worſhip God in a way they judge impious. Any heir apparent who profeſſes ſuch tenets, or refuſes upon a juſt demand to renounce and abjure them in the moſt ſolemn manner, may be excluded from ſucceſſion with much better ground than if he were an ideot or a madman; as the holding of ſuch tenets muſt make him more dangerous to a free people than any folly or madneſs.

What we have ſaid relates not only to monarchs but all ſorts of governors, and to the power of a ſtate itſelf over its colonies, or provinces. If any citizens, with permiſſion of the government, leave their country, and at their own expence find new habitations; they may juſtly conſtitute themſelves into an independent ſtate, in amity with the mother-country. If any are ſent off at the publick charge as a colony, to make ſettlements ſubject to the ſtate, for augmenting its commerce and power; ſuch perſons ſhould hold all the rights of the other ſubjects, and whatever grants are made to them are to be faithfully obſerved. If the mother-country attempts any thing oppreſſive toward a colony, and the colony be able to ſubſiſt as a ſovereign ſtate by itſelf; or if the mother-country loſe its liberty, or have its plan of polity miſerably changed to the worſe: the colony is not bound to remain ſubject any longer: it is enough that it remain a friendly ſtate. Nor are we to imagine that any early covenants founded upon errors about the moſt eſſential points in

view, can ſtill bind large ſocieties of men fit to ſubſiſt as happy independent ſtates, to continue in a ſubmiſſion everſive of all proſperity and ſafety. Nor has any thing occaſioned more miſery in human life than a vain and inſolent ambition, both in princes and popular ſtates of extending their empires, and bringing every neighbouring ſtate under ſubjection to them; without conſulting the real felicity either of their own people or of their new acquiſitions. And hence have aroſe theſe vaſt unwieldly empires; the plagues of all around them; which after ſome time are ruined by their own bulk, with vaſt deſtruction of mankind.

CHAP. VIII.

Of CIVIL LAWS *and their* EXECUTION.

THE power of making and executing law is the moſt important internal power. Every law ſhould be intended for ſome real utility to the ſtate; and as far as human power can go, laws ſhould enjoin whatever is of conſequence to the general proſperity. But if in the very conſtitution of the civil polity, the ſovereign or chief magiſtrate is only entruſted with ſuch power as is requiſite for the preſervation of the ſecular rights of men; then they cannot exert any ſort of coercive power about the means of forming mens minds to religion or inward virtue. But when they are entruſted with certain revenues, to be employed for the publick utility at their diſcretion; and where they are not expreſsly reſtricted to the care of the ſecular rights of men; ſince human happineſs chiefly depends upon virtue, the civil governors muſt think it belonging to

their office, to inſtil into the minds of their ſubjects the true ſentiments of religion and virtue, and to influence their hearts to reliſh them, by the beſt inſtruction and diſcipline from their infancy, that they may be furniſhed for all the honourable offices of life.

But at the ſame time they muſt maintain to all, their ſacred right of judging for themſelves; which would be plainly encroached upon by any penal laws about ſuch opinions, whether ſecret or divulged, which do not lead to any practices deſtructive to ſociety. Nay though ſuch tenets ſhould be divulged by men who imagine themſelves bound in conſcience to divulge them; it would generally be more adviſable only to inſiſt that ſuch perſons give proper ſecurity that they will give no diſturbance to the ſtate, and bear their ſhare in all ſervices required of them for the publick; and to puniſh rigorouſly only the injuries done in conſequence of ſuch dangerous opinions; rather than to inflict any penalties on men for theſe opinions themſelves. It it often better to leave ſuch tenets to be exploded by the juſter reaſonings of wiſe men, than to proceed to any ſeverities on account of the tenets themſelves.

But as the far greater part of the people will not uſe this right; but induced by ſpecious appearances of ſanctity, and oſtentation of ſuperior wiſdom in ſome deſigning men, will incautiouſly give up themſelves to be led by them; it muſt plainly be the buſineſs of the magiſtrate to get this *leading* into his own hands; by appointing men of character and learning to teach the people the juſt ſentiments of religion and virtue, and to confirm them by the moſt effectual reaſonings; that they may not be perverted by the wicked arts of others. And if men in power have any tolerable wiſdom, and hold any tolerable ſcheme of religion, they will always find the far greater part of the people very tractable to follow as they lead them, ſo that little need be apprehended from a few who may diſſent from the publick ſchemes.

The exacting by law, under any penalties, that people ſhould conform in opinion and practice to any te-

nets or rites of worſhip, that are either falſe and abſurd, or though true yet of little conſequence, generally occaſions great miſchief to any ſtate; ſince according to the different genuiſes and tempers of men, they have and always will run into different opinions and practices in matters of religion: and thence ſome of the moſt uſeful hands will deſert the country when they are harraſſed about ſuch matters: the ſtate will be plagued with ſedition and diſcord: and the activity of men turned off from the ſervices and occupations which are moſt uſeful to the community, and occupied upon trifles. No good ſubject ſhould meet with any vexation, or be excluded from any civil right, on account of any opinion or modes of worſhip which do not hurt any of their neighbours.

II. THE example of thoſe in ſupreme power will have the higheſt influence in promoting the virtue of the people; eſpecially if they advance to honours only ſuch as are of approved integrity and purity of manners. The populace in their elections, if they are truly free, always follow ſome appearance of virtue; and will ſeldom promote any but ſuch as are of diſtinguiſhed integrity. Nor will honour or power alter the tempers of the perſon advanced, if there are proper terms fixed by law for the holding of offices; ſo that upon expiration of the term, they muſt return into the common condition of the people. Where the power of promoting to offices is in the monarch, the men promoted will probably reſemble their political creator.

Next to *piety toward God*, the great ſource of happineſs, and the ſtrongeſt incentive to all other virtues, the virtues to be moſt cultivated in a ſtate are, *temperance*, *juſtice*, *fortitude* and *induſtry*. Such temperance as reſtrains not only exceſſive impulſes toward pleaſure, but all luxury and immoderate expences on the ſhew and grandeur of life, muſt be allowed, by all who conſider it, to be neceſſary to the proſperity of any ſtate. There is a certain meaſure of ſenſual pleaſures and elegance both grateful and innocent; to provide us to this degree God and nature have

produced many fruits and other materials with exquiſite art. Nor is there any moral turpitude in the enjoyment of any pleaſure, if it be inconſiſtent with no duty of life, nor tends ſo to ſoften or weaken the mind that it ſhall be diſtreſſed in the want of it, or be apt to neglect and counteract its duty to obtain it. Luxury therefore ſhould be defined, "ſuch an exceſſive deſire "or uſe of the lower pleaſures, as is inconſiſtent with "diſcharging the offices of life." Nor is it poſſible preciſely to fix general meaſures of lawful enjoyment for all; they muſt be various as their fortunes, attachments, dependent friends, and even bodily conſtitutions are various. Now luxury, in this notion of it, as it laviſhes out mens fortunes, and yet increaſes their keen deſires, making them needy, and craving; it muſt occaſion the ſtrongeſt temptations to deſert their duty to their country, whenever it is inconſiſtent with pleaſure: it muſt lead the citizens to betray their country, either to a tyrant at home, or a foreign enemy, when they cannot otherwiſe get funds for their luxury. With the luxurious generally every thing is venal.

Nor is it juſtly alleged, that luxury is neceſſary or uſeful to encourage arts and manufactures. For arts and induſtry may be encouraged to the higheſt without any luxury, at leaſt all innocent, neceſſary, or elegant arts. Men of higher fortunes may without any luxury purchaſe the moſt ingenious and nice manufactures, as far as their ſeveral obligations in life allow it. And if any ſuch deny themſelves ſuch expences, from views of a finer liberality, in raiſing the condition of indigent friends; they along with their families, kinſmen, and friends thus ſupported, may make a much greater conſumption of the very ſame products and manufactures, or of others equally deſerving encouragement in the ſtate; and thus they with their dependents are more beneficial to artificers.

Need we mention too, that a ſober, frugal oeconomiſt, in a long and healthy copious life, generally makes greater conſumption than a prodigal of equal fortune; who is often puniſhed with a long tract of diſeaſes and

penury, for the extravagance of a few years. And then, as lower orders are always imitating the manners of their ſuperiors; the plague of luxury will ſoon infect the very loweſt and even the mechanicks. Then they cannot ſubſiſt without higher prices for their labours; the manufactures muſt conſequently riſe in their prices, and cannot be vended abroad, if any more induſtrious and ſober country can afford the like in foreign markets at lower prices.

III. It is ſcarce neceſſary to ſhew the neceſſity of *diligence* and induſtry, ſince the wealth and power of a nation depends almoſt wholly upon them. Agriculture is neceſſary, to prevent a conſtant drain for the food of our people, to obtain grain for exportation, and furniſh the very materials for many of our artizans, which otherwiſe we muſt buy abroad. And in like manner all mechanick arts, either ſimpler, or more elegant, ſhould be encouraged, leſt our wealth be drained by our buying foreign manufactures. Merchandize and fiſhery are of great conſequence: nay the very building of ſhips too, that we may not loſe, the profit of the carriage either of our own or foreign goods, and with this, the training of ſailors; which contributes both to the increaſe of wealth and to the defence of the ſtate in war. The mechanick trades ſhould be held in reputation, ſo that people of better fortunes and families may not deem it below them to be concerned in them.

IV. THAT juſtice is neceſſary cannot be a queſtion. For if laws and juſtice do not prevail, as without them no right natural or acquired can be ſafe, all induſtry muſt languiſh. Nay as merchants muſt augment their prices in proportion to all their caſual loſſes: where there is much injuſtice, the merchants muſt charge in the price of their goods the loſſes they ſuſtain by the frauds of the unjuſt; and thus the beſt citizens muſt be loaded with this burden: nay further, any neighbouring ſtate where juſtce more prevails, if other circumſtances be equal, can underſel us, on this account. Where therefore juſtice is not maintained, the

commerce of a nation muſt ſink, with all its attendant profits.

To examine into the beſt methods of *adminiſtering juſtice*, would require long diſſertations. We only briefly ſuggeſt, that a ſmall number of ſimple eaſy laws might ſufficiently protect and regulate the citizens, if there were ſuch a contrivance for the courts of judicature, as would entruſt the deciſion of ſuits to men of great goodneſs and equity and approved integrity; ſevere reſtraints upon vexatious or oppreſſive ſuits would be of the higheſt advantage. The earlier laws and conſtitutions of the Romans about theſe matters are worthy of imitation.

V. MILITARY arts and virtues are accompliſhments highly becoming all the more honourable citizens. Warfare therefore ſhould be no man's perpetual profeſſion; but all ought to take their turns in ſuch ſervices. And however it may be obſerved, that, when according to modern cuſtom, armies are made up of the very dregs of a people, fellows too diſſolute and worthleſs for any other occupation, whoſoever takes to this way of life for a few years is made unfit for any other occupation for the future; yet the caſe would be quite otherwiſe if all the beſt citizens ſerved in our armies by turns. This method too would bring along with it theſe grand advantages: all the people would be trained and ſkilled in military ſervice. Should one of our armies be entirely cut off, we could have another of veterans immediately: were the chief officers cut off; we would have others of equal experience in readineſs to take the command: and it would be no eaſy matter for either any ambitious citizen at home, or any foreign invader, to trample upon the rights of an armed people well trained in military ſervice.

VI. THE laws and whole conſtitution of the ſtate ſhould be ſuch as may prevent any ſmaller bodies of citizens to be more ſtrongly attached to each other, or to any foreign intereſt, whether of prince or biſhop, than they are to their own country, or have greater dependance and expectations of promotion by them.

And the citizen ſhould be taught that no antient engagements, obtained from their anceſtors by the moſt impious frauds, can be of any validity againſt the proſperity of their country. For it cannot be of uſe to religion that eccleſiaſticks ſhould have great ſecular power of any kind; and much leſs that all eccleſiaſticks through the world ſhould be deemed as a great corporation to be governed by a common prince or council; who too ſhould have power to promote, in many nations, what favourites they pleaſed, to high dignities and princely revenues; and to whom there ſhould lie appeals from the higheſt courts of the ſeveral nations, in matters upon which wealth and power depend.

VII. It is one great deſign of civil laws to ſtrengthen by political ſanctions the ſeveral laws of nature; and to appoint ſuch forms of buſineſs, and of proceſs in courts, as may prevent frauds and promote juſtice. The populace often needs alſo to be taught, and engaged by laws, into the beſt methods of managing their own affairs, and exerciſing their mechanick arts: and in general, civil laws ſhould more preciſely determine many points in which the law of nature leaves much latitude.

From the very beſt body of civil laws certain external rights muſt ariſe, which though no man can inſiſt upon with a good conſcience, yet if the perſons to whom they are granted claim them, they muſt hold them with impunity: nor can any one rightly have recourſe to violence againſt ſuch rights, or obtain redreſs at law. Many alſo of the moſt ſacred duties can be no matters of compulſion, but muſt be left to the honour and conſcience of thoſe concerned. There are certain benefits granted by law, which no good man would claim, but when claimed they cannot be refuſed *. Any ſuch covenants or teſtaments too as for want of the legal formalities are not confirmed by human laws, a good man would often think himſelf bound to hold

* On theſe two heads there are two good orations of Barbeyraque, annexed to his tranſlation of the ſmaller book of Puffendorf, *De legum permiſſione et beneficiis*.

as valid, if there is nothing appointed in them beyond the moral power of the parties or teſtator, nor contrary to equity. But if they are wrong in either of theſe reſpects, a good man may take the benefit of the law.

VIII. THE *ſanctions* of laws are *rewards* and *puniſhments*. There is this common reward annexed to obedience to civil laws, that thoſe who obey them continue to enjoy all the advantages of civil life. Some few civil law have peculiar rewards, ſuch as honours, and premiums in money. The natural honour is "the good opinion others entertain of our moral excellencies." Civil honours are "theſe external indications of deference which are appointed by law."

The *ſimple eſtimation*, or character of common honeſty, is ſo much every man's right, that no governors can deprive one of it at pleaſure, without a cauſe determined in judgment. The higher eſtimation, or *intenſive*, as ſome call it, is not a matter of perfect right; as no man can at the command of others form high opinions of any perſon, without he is perſuaded of his merit. But as to external marks of deference, and precedencies, the civil powers have a right to determine about them, as they do about other civil rights. If theſe are conferred only upon real merit, they will be of high account with wiſe men. But if they are often conferred injudiciouſly, they will grow mean and deſpicable to wiſe men, and matter of ſcorn and jeſt: as they are often ſeen where they are hereditary, and there is no cenſorial power to degrade the unworthy.

IX. THE true end of all puniſhment is this, that all bad men by the terror of them may be reſtrained from doing any thing injurious, and thus the community be preſerved in ſafety. *Chaſtiſement* as diſtinguiſhed from puniſhment, has in view only the reformation of the ſufferer: and *reparation of damage*, aims at the utility of the one who ſuſtained the loſs: to this men are often bound even without any preceding crime or fault.

Neither anger, nor hatred of the criminal, nor even that honeſt indignation at moral evil, which is natural to every good man, ſhould be the ſole ſprings of puniſhing: but rather a calm regard to the common intereſt, and the ſafety of the innocent. The true meaſure of puniſhment is not to be taken from the degrees of moral turpitude, but the exigence of ſociety. A great deal of high moral turpitude muſt paſs unpuniſhed: and yet on the other hand if the ſafety of the community require it, ſome actions which ſhew ſmaller depravity of temper, muſt be puniſhed ſeverely. Thus no penalties are inflicted on ingratitude, and want of humanity; while any inſurrection againſt the ſupreme power, though upon plauſible pretences of the right of ſome competitor, muſt be puniſhed ſeverely. But the crimes which deſerve the higheſt puniſhments on both accounts, are the publick ones of men in power, perverting what was entruſted to them for the ſafety of others, to the oppreſſion of the citizens.

Though it may not be neceſſary to puniſh the firſt motions or haſty intentions of wickedneſs, nor is it often practicable; as ſuch raſh motions may upon ſudden provocation ariſe in the breaſts of good men, who will ſoon reſtrain them of themſelves: yet ſuch as have proceeded to any external actions which might have effectually accompliſhed the evil, but were prevented by accident, or force, or the timely aid of others, and which ſhew furious malice and obſtinate purpoſes of injury, theſe deſerve as high puniſhments as if they had obtained their effect. Sometimes indeed the publick intereſt may require the granting even rewards to ſome bad actions, and pardoning the greateſt criminals.

The *reſpect of perſons* which is highly culpable in judgment, is when any regard is had to ſuch qualities of actions or circumſtances of the guilty as neither affect the turpitude or the crime, nor the ſenſe of the puniſhment, nor the common intereſt of ſociety. But circumſtances which affect any of theſe three muſt always be regarded. And therefore when other circumſtances are equal, pecuniary fines are to be enlarged for equal

crimes according to the fortunes of the criminals, and corporal puniſhments according to their ſtrength of body; and ignominious ones are to be abated according to the dignity of the perſons.

But we muſt not go on increaſing without bounds the ſeverities of puniſhment upon the higher crimes. For frequent ſpectacles of tortures have a tendency to diminiſh our natural compaſſion and tenderneſs of heart, and to make the tempers of men more ſavage and cruel.

X. IT is unjuſt to puniſh any man for the crimes of others; nor is it equitable to confiſcate the whole fortune of a family for any crime of the head of it. All the natural claims of the wife and children to a ſupport out of it, as well as debts due to any innocent perſons, ſhould firſt be diſcharged. Nor is it naturally juſt to puniſh any bodies-corporate for any crimes; the guilty only in ſuch caſes ſhould be puniſhed, whether private perſons or magiſtrates of the corporation. It may ſometimes be juſt to take from the corporation either theſe privileges, or fortifications, or arms, by which the criminal members of it were encouraged or enabled to do injuries to their neighbours, if ſecurity againſt like injuries can be obtained no other way. The corporation may ſometimes be bound to compenſate damages out of its publick ſtock, or even the private fortunes of its members, when the criminals cannot be found, or cannot repair the damage; if it has been occaſioned or encouraged by any of theſe advantages, privileges or fortifications, which the body had obtained for their own behoof.

XI. EVERY government has the juſteſt right to exact tributes from the ſubjects by law, provided they are no more than what are requiſite for the prudent adminiſtration of publick affairs; as this publick expence is made for the behoof of all. The violating ſuch laws by any ſubject is equally criminal with theft. Nor is the injury ſo properly done to the governors, as to our fellow-ſubjects; who muſt be obliged to make up deficiencies occaſioned by theſe frauds, ſome other way, and muſt be ſubjected to other bur-

dens on this account; beſide many other inconveniences. There is no other poſſible method, of making men contribute in juſt proportions to the publick charge, than by inſtituting a *cenſus*, or valuation of all their fortunes.

XII. THESE are the obligations of ſubjects toward their governors: firſt, they are ſacredly bound to obey all their juſt laws and commands: and ſecondly, if the thing commanded be a matter committed to the power of the governor; it is generally the duty of ſubjects to obey, even when they judge that the orders are imprudent. This holds moſt obviouſly in military operations. For to allow the inferior to judge of his orders, and only to obey when he thinks them prudent for the good of the ſtate, would deſtroy all military diſcipline, and reduce an army into a tumultuous mob.

3. Hence it follows that in matters committed to the wiſdom of governors, the ſubjects may act a juſt nay an honourable part in obeying ſuch orders as were very criminal to their governor: the ſubject by obeying is preventing the greateſt miſchief; ſince from the relaxing of all order and government, far greater evils muſt generally enſue, than from the execution of very imprudent orders.

4. But if the thing commanded ſeems to the ſubject ſo entirely pernicious and ruining to the ſtate, that it were better to break through and deſtroy the authority of ſuch commanders, than to execute ſuch deſtructive orders: the ſubject may refuſe obedience. But in ſuch matters they ſhould uſe the utmoſt caution that they do not judge amiſs.

5. Where we are commanded to do any act directly irreverent and impious toward God, or contrary to the perfect rights of others; or where the matter commanded was not committed to the power of the commander; we are under no obligation to obedience. Nay it is often highly honourable to endure rather any puniſhment, than ſubmit to a precedent that may be ruinous to our country. We ſhewed

above * in what caſes it is lawful for ſubjects to reſiſt their governors.

The common duties of all ſubjects muſt eaſily appear from the nature and origin of civil power and the political union. Their peculiar duties ariſe from their ſeveral ſtations, relations, and offices in the ſtate.

CHAP. IX.

The LAWS *of* WAR.

THE rights of war and treaties are of that claſs which reſpect foreigners. The principal matters of right in war, as to their cauſes and bounds, were explained in the former book †, when treating of war among perſons in natural liberty. The ſame maxims hold in the publick wars of ſtates, which with reſpect to each other are in the ſame ſtate of natural liberty.

As to publick wars of a leſs ſolemn kind, without the order of ſovereign ſtates on both ſides; they may be ſufficiently underſtood from what was already ſaid about the right of governors to repreſs tumults and inſurrections, and from the right of reſiſtance that ſubjects may have in defence of themſelves againſt perfidious governors ‡. "A war undertaken by order of "independent ſtates on both ſides" is called a *ſolemn war*. Nor need we add to the definition, that it be *previouſly proclaimed*; though it be highly becoming every civilized nation, when they have recourſe to

* Book III. vii. 2. † Ch xv. ‡ Book III vii. 2.

force, to let all around know the grounds of it, as ſoon as they can conveniently. But it is plainly not incumbent on the nation invaded by another, to make a previous declaration before it defends itſelf. Nor is it always neceſſary that the aggreſſor ſhould make ſuch previous declaration; as perhaps his ſureſt method of obtaining his right may be by ſurprizing the enemy; and a previous declaration might prevent his beſt opportunity of ſucceſs. What has led ingenious and learned men to make a previous proclamation neceſſary, was too great a deference to the *foecial laws* among the Romans. But as contending by violence is not agreeable to the rational and ſocial nature, it is unworthy of a good man, when he is forced to betake himſelf to it, not to declare openly, as ſoon as he can with ſafety, his motives and intentions, that all may ſee that he could not otherwiſe obtain his right.

As in civil wars there are often ſpecious reaſons on both ſides; all neighbouring ſtates ſhould ſhew the ſame favour to both the contending parties as to theſe engaged in ſolemn wars. Nay in civil wars there are as frequently as in the ſolemn, juſt cauſes on one ſide, and ſpecious ones on the other. Nor is either of the parties engaged in them to be deemed like robbers or pirates, abdicating or forfeiting all the rights of mankind.

II. THE laws of war either reſpect the contending parties or neutral ſtates. "What right reaſon "ſhews neceſſary to be obſerved in war for the general "intereſt of mankind" may be called *the law of nations of neceſſary obligation.* But "what a long tract "of time has made cuſtomary, with a tacit approba-"tion or conſent of nations;" which however might be altered by contrary cuſtom, or taken away at once by a timeous premonition of all concerned, we may call the *voluntary law of nations.*

The juſt cauſes of war were explained in the former book *. But with reſpect to neighbouring ſtates we

* Ch. xv.

may ſuggeſt, that as among citizens there are allowed actions at law for prevention of damages not yet done, and agrarian laws reſtrain ſuch exceſſive acquiſitions of wealth as may prove dangerous to the ſociety, though the acquiſitions are not to be made by injurious means; ſo ſometimes among neighbouring ſtates, a dangerous increaſe of power in any one of them may give a juſt cauſe of war, if no gentler ſecurities can be obtained: eſpecially when the people of that ſtate ſhew a general ambition of military glory and conqueſt, and quit all peaceful arts: ſo that their neighbours muſt be in perpetual dangers, unleſs they alſo quit the innocent arts of peace, and are always a training to war. But this is an inſtance of theſe *extraordinary rights* which ſeldom occur.

In publick wars the term of commencement, and the term of ending, or the bounds of our demands, may be fixed the ſame way as thoſe of private perſons in natural liberty; of which formerly.

The juſt methods of carrying on war are open violence, or ſuch arts of deceiving as carry along with them no profeſſion or tacit engagement of communicating our ſentiments to the enemy *. Violence is juſtifiable only againſt men in battle, or ſuch as violently obſtruct our obtaining our rights; although by the inhuman cuſtoms which have prevailed, men may exerciſe with impunity any ſort of cruelties toward their enemies. It is alſo very ordinary to deceive enemies by any falſe narrations, or any ſort of diſcourſe, except ſuch as imports making ſome covenant or treaty with them. But as it is by treaties alone that either peace can be reſtored, or more humane methods of war maintained, and horrid mutual cruelties prevented; it never was, nor ought it to be allowed to deceive enemies by any form of treaties.

III. THERE are many other obligations introduced by long cuſtom importing tacit covenants; which however could be taken away by a timeous premoni-

* Book II. x. 2.

tion of all concerned. Such as, that none ſhould uſe poiſons in war, or employ any of the enemies ſubjects or ſoldiers to aſſaſſinate their prince or their generals. That all meſſengers or envoys, or ambaſſadors ſent on either ſide ſhould have protection to their perſons, is indeed matter of neceſſary obligation; ſince it is by their means alone that peace can be obtained, without the entire deſtruction of one ſide, or any humane methods of war preſerved. But it is matter only of voluntary right that paſſports ſhould be mutually allowed, to any ſubjects of the hoſtile nation who come unarmed, to travel through their countries, or to reſide in their cities.

IV. UPON what grounds of juſtice the goods of the ſubjects of hoſtile ſtates are ſeized mutually, comes next to be explained.

1. All ſtates in amity are bound to reſtrain their ſubjects from depredations, or any way injuring the ſubjects of ſtates around them: and when ſuch injuries are done, they are obliged to compel the authors of them to make reparation. We ſpeak now of ſubjects who are amenable by law, and not of pirates or robbers.

2. When ſuch reparation is demanded and refuſed, the injured ſtate may juſtly have recourſe to force, ſeizing the goods wrongfully taken, or if they cannot find them, taking to their value from the authors of the injury, or from the ſtate, which by defending the depredators bring the guilt upon themſelves. And this right is ſtill more obvious if the injuries have been done by publick order.

3. If there is no opportunity of ſeizing the publick goods of the injurious ſtate, the injured may ſeize the private goods of any citizens of that ſtate. For as the political conſtitution and the civil power was erected for the behoof of all the ſubjects, they are bound to repair any damages ariſing from this contrivance which they fell upon for their own utility*. And

* Book II. xiv. 2. and Book III. iii. 2, art. 5.

the civil powers by giving their protection, have plainly ſupported and excited their ſubjects to ſuch injuries.

4. But then theſe innocent ſubjects who ſuffer thus by theſe repriſals, on account of their community, may juſtly claim from their community to have their loſſes repaired, out of the common ſtock, or out of the goods of the depredators. It certainly would be the more equitable and clear way, that goods thus ſeized as repriſals from the innocent ſubjects were only detained as pledges, till the injured ſtate received reparation another way, and then were reſtored to the owners. But a contrary cuſtom has prevailed *; and the old property is on all ſides deemed to be diſtinguiſhed, as ſoon as ſuch goods taken are brought into any fortreſſes of the captors, and adjudged, either to them or their community: ſo that ſhould they even be retaken afterwards, the old proprietors cannot claim them. Nor can they be taken by violence, or any claim be made upon them by the old proprietors, after they are any way legally acquired by any ſubjects of a neutral ſtate, and brought within their territories.

V. THE principal laws with reſpect to neutral ſtates are briefly theſe. 1. A neighbour-ſtate under no engagement to ſend auxiliaries to either ſide, ought neither to be involved in the war, nor ſuſtain any damage by it.

2. If the neutral ſtate by ſome former treaties be obliged to ſend auxiliaries to both upon the event of wars; when its two confederates are at war with each other, it ought to ſend aids to neither; or if it is inclined to engage in war, it ſhould ſend aids to that ſtate whoſe cauſe it judges to be juſt. For all ſuch offenſive and defenſive alliances bind only upon ſuppoſal that the cauſe be juſt: nor can they bind the

* Probably with a view to make the ſoldiers more active in diſtreſſing the enemy: as large ſhares of the goods taken are uſually given to the captors.

neutral ſtate to make war upon ſuch as are allied to them by ſolemn treaties.

3. A natural ſtate may juſtly purchaſe, or take by any other title, any moveable ſpoils taken on either ſide after they are adjudged as lawful prize: nor can the former proprietors have any further claim upon them. The neutral ſtates or their citizens are no competent judges of the juſtice of the war and the captures; and they may frequently be ignorant whether the goods they purchaſe are prizes taken in war or not.

4. But as to lands, forts, or cities, the caſe is different. The neutral ſtate muſt know by what title they are held, and that they were taken from a ſtate in amity with them: and by purchaſing them they muſt preclude that ſtate from retaking them again. What annual rents or ſervices may be due by any diſtrict or ſmaller town, to any great city or fort lately taken by the enemy, may juſtly be paid by ſuch as are neutral, to the preſent poſſeſſor; and the refuſal of ſuch payment might be deemed a declaration againſt the juſtice of the capture. If ſuch great cities or forts be again recovered by the old governors, the payments made to the enemy during his poſſeſſion muſt be ſuſtained as good; nor can the repayment of the ſame ſums or ſervices be demanded. But if the violent poſſeſſor pretends to ſell or alienate or relinquiſh for ever any ſuch rents or ſervices due by a neutral territory, or to exact payments of old debts, or to aboliſh them, the deed will not be valid againſt the old proprietor when he recovers his old poſſeſſions again.

5. Whatever new favour is granted, by a neutral ſtate to one of the parties in war, it muſt grant the like to the other, if it would preſerve neutrality; ſuch as the allowing any of its ſubjects to enliſt, or hiring out its troops, or ſupplying with military ſtores. Indeed the ſending arms or military ſtores, by way of merchandize, to either of the ſtates in war, is deemed commonly by the other a breach of the neutrality;

and they are accordingly ſeizable: and ſo are even common proviſions into any place beſieged.

6. Neutral ſtates muſt not be hindered in their commerce with either of the parties, except in arms or military ſtores; the nature of which too it is not eaſy to define. A neutral ſtate may ſet to freight its merchant-ſhips to either ſide for trade. If they are taken, the enemy's cargo is juſtly ſeizable, but not the ſhip. Neutral ſtates may freight the ſhips of either ſide; and if they are taken, the cargo cannot be made a prize, but the ſhip may. Nor ſhould any neutral ſtate loſe any right of pledge or mortgage formerly conſtituted, in any goods moveable or immoveable which happen to be taken in war.

7. Neither of the parties at war ought to uſe any violence againſt each other within the territories of a neutral ſtate, by taking men, ſhips, or other goods of their enemies, found in neutral ports. And the territory of each inclines not only their harbours, but any narrow bays running far into the land, the ſhores, and ſuch contiguous parts of the ſea as are within reach of any military engines. For if ſuch violence were allowed, a neutral ſtate might ſuffer greatly by being made a ſeat of war; and their commerce with both ſides muſt be entirely obſtructed.

8. As to deſerters and fugitives; neither of the contending parties can exerciſe any juriſdiction conjoined with force, over their own citizens within the bounds of a neutral ſtate, except by commiſſion firſt obtained from the civil powers of the neutral ſtate. No ſtate indeed ſhould protect ſuch as have been guilty of the more atrocious, deteſtable crimes; ſuch criminals ſhould be ſeized and delivered up to juſtice. But as to deſerters in war from either ſide, or perſons who have fled on account of religion, or any ſtate-crimes they committed, in conjunction with any ſtate-faction, upon ſome plauſible ſhews of right; a humane cuſtom has obtained that they ſhould find protection in all other ſtates, while they do not make any new attempts againſt the civil powers of their country.

CHAP. X.

Of TREATIES *and* AMBASSADORS, *and the entire* DISSOLUTION *of* STATES.

THE chief laws of nature about treaties were explained in the doctrine of contracts in natural liberty *. But we muſt remember that the exception of unjuſt force and fear cannot be admitted againſt the obligation of any treaties of peace; otherwiſe the old controverſies might always be kept a-foot. And yet ſuch exceptions may juſtly take place when the war is manifeſtly and avowedly unjuſt on one ſide; or if the terms impoſed by the more potent ſide are manifeſtly injurious and contrary to all humanity. In theſe caſes the party injured may inſiſt upon an arbitration; and if the other ſide refuſe to ſubmit to it, each ſide muſt by force conſult its own ſafety and the maintenance of its rights, by what aids it can find.

Treaties are divided into *real* and *perſonal:* the perſonal, which are in leſs uſe, are entered into in favour of the prince's perſon, and ceaſe to bind upon his demiſe. The *real*, reſpect the body of the people, or the nation, which is deemed immortal. Treaties are alſo divided into the *equal*, ſuch as bring equal or proportionable burdens on each ſide, and *unequal*, which bring unequal burdens. But it is not every unequal treaty that any way impairs or diminiſhes the § majeſty and independency of the ſide ſubmitting to the greater burden.

Hoſtages in former ages were ſecurities commonly given for performance of treaties, but they are now gone into diſuſe; becauſe it would be exceedingly in-

* Book II. ix. § Book III. v. 5.

humane to treat the innocent hoſtages any way harſhly becauſe of the perfidy of their country.

II. IN making treaties *ambaſſadors* are employed. Their rights are all the ſame, whatever names are given them, if they are entruſted to tranſact the affairs of a ſovereign ſtate. Their perſons ſhould be ſacred and inviolable, as we ſaid above. They have a juſt natural right to demand that their propoſals ſhould be delivered. But as to an allowance to reſide any time in the ſtate to which they are ſent, they may claim it as due out of humanity, but cannot inſiſt on it as a perfect right. Since the buſineſs of the more active ambaſſadors is much the ſame with that of ſpies upon the nations where they reſide. If they are allowed to reſide; the law of nature would give them no higher rights or immunities, than any other foreigner might claim without any publick character.

But by the voluntary laws of nations, they have many ſingular privileges and immunities, both for themſelves and all their neceſſary retinue: all which however any ſtate might without any iniquity refuſe to grant them, if they give timeous intimation of their deſign to do ſo to all concerned.

1. This is cuſtomary in the firſt place, that no action can be brought againſt an ambaſſador or his neceſſary retinue, ſuch as his ſecretaries, or domeſticks, in any courts to which he was not ſubject previouſly to his taking this character. What has been in view in this cuſtom, was this; that an ambaſſador, the more vigilant he is in office, will be generally ſo much the more diſliked and hated in the ſtate where he reſides: and therefore were he ſubject to its courts, he would not have a fair hazard for the juſtice in a nation prejudiced againſt him. The ſubjects of the ſtate where he reſides may eaſily abſtain from any contracts with him in which they may be wronged, ſince they can have no action againſt him. Should an ambaſſador or his retinue commit any outrageous crimes; he may be ſent home, and juſtice demanded of his conſtituents; the refuſal of which may be a juſt cauſe of

war. If any ambaſſador intermeddles in trade, his merchant-goods, except ſuch as are neceſſary for his ſupport in his embaſſy, are liable to attachments or arreſts for the debts he contracts in trade.

2. An ambaſſador's houſe is deemed a ſanctuary to himſelf and all his retinue and attendants: of which however a liſt may juſtly be demanded upon his admiſſion; and the ſtate where he is to reſide have a right to fix what retinue of his they will receive or grant immunities to. But an ambaſſador by this privilege muſt not impair the juriſdiction of the ſtate where he reſides over its own ſubjects, by making his houſe a ſanctuary for any criminals among them.

3. An ambaſſador has the ordinary power of the head of a family over his own domeſticks; or ſuch juriſdiction in their civil actions as his conſtituents have granted him. But neither an ambaſſador, nor even a prince reſiding in a foreign ſtate, has a criminal juriſdiction or power of inflicting capital puniſhments upon his own ſubjects, except by permiſſion of the ſtate where he reſides.

4. *Inhibitions* may juſtly be uſed againſt an ambaſſador, to reſtrain him from any outrages againſt our ſubjects: and they themſelves have the natural right of repelling force by force.

5. No ſtate is bound to admit any exiled criminal or fugitive ſubject of theirs, as an ambaſſador from any neighbouring ſtate. But if ſuch a one is ſent with ſuch commiſſion, he cannot juſtly be ſeized or puniſhed, but he may be immediately ordered to quit our country.

6. The honours and precedencies of ambaſſadors muſt be determined by expreſs conventions or the tacit ones of long cuſtom. The ſole natural cauſes of precedency would be the ſuperior excellency of the conſtitution of the ſtate he repreſents; or his own ſuperior perſonal worth. The abſolute or hereditary power of his conſtituents is the worſt reaſon of all; if we regard true merit, and not cuſtoms introduced by barbarians.

III. As to the diſſolution of our political relations, we may obſerve: that by perpetual baniſhment, one ceaſes to be a ſubject any further. But it is not ſo in temporary baniſhments; much leſs in perpetual confinements to any remote parts of the ſtate.

2. No man can claim it as his perfect right to quit his country without the permiſſion of the civil powers or the laws, while it remains unaltered.

3. Where the old conſtitution is much altered, either by foreign force or any potent faction; ſubjects who diſſent from theſe changes have a right to conſult their own ſafety elſewhere. And provinces may reſume their independency if they can: as they were ſubjected, as we ſaid above *, only by their own conſent, and that to a ſtate conſtituted in a very different manner.

4. But upon any improvements made in a conſtitution, ſubjects can have no juſt right to deſert it.

5. Whatever changes be made by the citizens themſelves in their own conſtitution, their treaties with foreigners ſtill remain obligatory on both ſides.

IV. We may from what was ſaid above ſee, what right any ſtate can have to give up any part of its diſtrict, or any province with the people dwelling in it, to an enemy, or any foreign potentate. For firſt, as the ſeveral parts of any community, and even provinces, ſubmitted themſelves to the whole body for the common utility of the whole, in which each one was to ſhare; the community has no right to give up or alienate any parts or any provinces without their own conſent; or to oblige them to be ſubject to any other power, when they think they can otherwiſe better conſult their own intereſt. But on the other hand, as there can be no obligation to impoſſibilities; if a ſtate cannot defend its more expoſed parts, or its provinces; it muſt leave them unprotected: nay, if the ſafety of the whole cannot otherwiſe be maintained, it may bind itſelf by a treaty to give no further defence

* Book III. vii. 8, 9, 10.

to theſe parts or provinces. But ſuch a treaty impoſes no obligation upon the part or province ſo deſerted, to ſubmit to this new claimant. It may juſtly conſult its own intereſt any other way; either by obtaining new confederates, or giving itſelf up to ſome other ſtate upon as good terms as it can; that it may be protected againſt the preſent invader. For that covenant about the common defence of all, by which the ſeveral parts were united into one ſtate, is now come into the caſe of contracts * about what proves impoſſible to be performed.

What is ſaid about any part of a people or a province, holds alſo as to any brave citizen, whom an enraged enemy demands to be given up to him. Such a brave man in caſes of the utmoſt extremity may be as it were abandoned; or no further protected. But his country has not a right to ſeize and deliver him to the enemy, or to hinder him to conſult his ſafety elſewhere.

V. As to the entire diſſolution of ſtates; theſe maxims hold: when a ſtate is entirely conquered, the ſeveral ſubjects of it, and the provinces too have a right to ſecure themſelves as well as they can; whether by adjoining themſelves to any other ſtate, or by attempting to ſet up a new ſovereign ſtate to themſelves in the province. Citizens no doubt are bound to hazard all for their country, and not to deſpair too haſtily about its ſafety. But if they have made all poſſible efforts for their country, and yet all in vain, they may juſtly conſult their own ſafety as they can.

2. If by any unexpected accidents, a ſtate which ſeemed extinct and conquered for ſome conſiderable time, finds opportunity of ſetting up again independently, its former ſubjects and provinces ſeem bound to re-unite themſelves to it: provided that during the conqueſt they came under no new and juſt engagements inconſiſtent with this re-union. For ſuch engagements as the citizens or provinces of the ruined ſtate have entered into with foreigners, without any fraud, while

* Book III, vii. 8, 9, 10.

their former country ſeemed deſtroyed, muſt be as obligatory as any.

3. A ſtate which has long continued conquered, and was made a province to the conqueror, has loſt all its rights over any of its former citizens who have fled to other countries, and over its former provinces. And though after a courſe of ages a new ſtate ſhould be formed in the ſame tracts of land formerly occupied by the old ſtate; this new ſtate can claim none of the peculiar rights of the old one. The ſtates occupying the ſame lands in different ages may be quite different political bodies: and the political body may remain the ſame when they change entirely their lands, nay while they have none at all in poſſeſſion.

While our country remains, all good men ſhould be united in this purpoſe, to deem nothing too hard to be endured or done for its intereſt; provided it be conſiſtent with the laws of that more antient and ſacred aſſociation of all mankind, of which God is the parent and governor. "Our children are dear to us, our "wives are dear, ſo are our parents, our kinſmen, "our friends and acquaintance. But our country "contains within it all theſe objects of endearment, "and preſerves them to us: and therefore every good "man ſhould be ready to lay down his life for it, if "he can thus do it ſervice."

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